

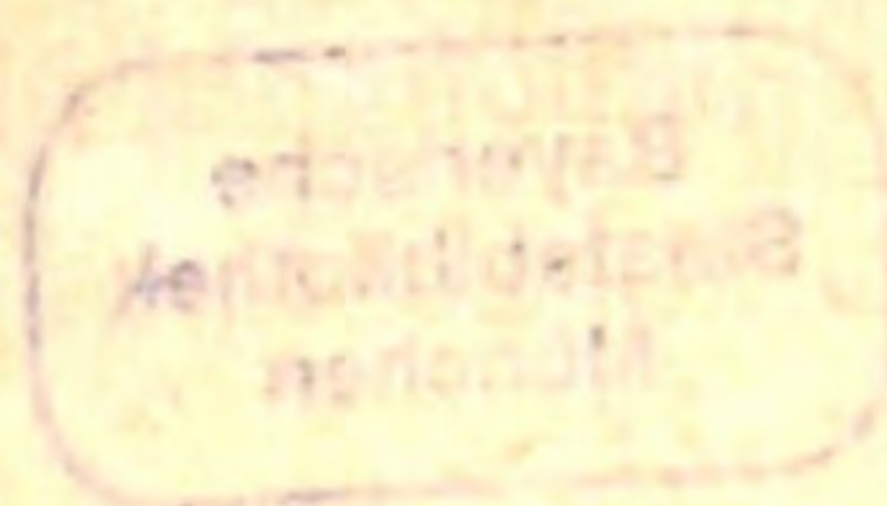
WHITELOCKES · NOTES
UPPON · THE · KINGS · WRITT
FOR · CHOOSING · MEMBERS · OF · PARLEMENT
XIII · CAR · II
BEING · DISQUISITIONS
ON · THE · GOVERNMENT · OF · ENGLAND
BY · KING · LORDS · AND · COMMONS.

PUBLISHED BY CHARLES MORTON, M.D.

SECRETARY OF THE ROYAL SOCIETY, FELLOW OF THE SOCIETY
OF ANTIQUARIES, AND OF THE IMPERIAL LEOPOLDINE AND
PETERSBURG ACADEMIES, FIRST UNDER LIBRARIAN OF THE
BRITISH MUSEUM, AND PHYSICIAN TO THE FOUNDLING
HOSPITAL.

VOLUME II.

LONDON PRINTED BY W. STRAHAN
FOR ANDREW MILLAR IN THE STRAND
IN THE YEAR MDCCLXVI.



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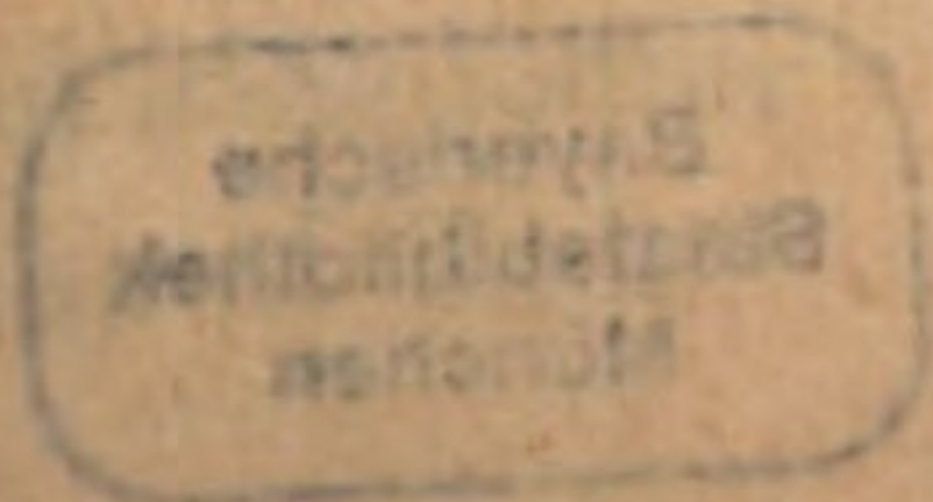
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WHITLOCK'S NOTES
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OF THE GOVERNMENT OF ENGLAND
BY LORDS AND COMMONS

EDITED BY CHARLES MORTON, M.D.
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OF ARTS AND OF THE AMERICAN ACADEMY AND
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IN THE YEAR MDCCLXXI

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C H A P. LX

And the names of the said.

THE latine word heere used is "nomina," which some derive from notamina^a: and they were first imposed for distinction of persons, which we call christian names; after for difference of families, which we call surnames; and have been especially respected, as whereon the glory and credit of men is grounded, and by which the fame is conveyed to the knowledge of posterity. Every person had in the beginning one only proper name; as with the Britains Brute, the Jewes Adam, the Ægyptians Anubis, the Chaldæans Ninus, the Medians Aftyages, the Romans Romulus, the Gaules Litavicus, the Germans Ariovistus, the Saxons Hengist; and so all other nations, except the savages of Mount Atlas in Barbary which were reported to be namelesse and dreamlesse^b. Afterwards, with us, they came to two names, the christian name and the fir-name, as it now continues; though some have given two christian names with us, as Charles James, etc. which is more in request in France and Spayne, especially in Italy and Sweden.

Our brittish auncestors had their peculiar names for the most part taken from colours, they using to paint themselves; and some of those yett continue with the Welch: afterward they tooke roman

^a Cambd. Remains, p. 40.

^b Plinius, Marcellinus.

names when they were a province, which became corrupted or extinguished after the entry of the Saxons who brought in the German names, and the Danes some of theirs; and the Normans who originally (saith Cambden) used the german tounge, brought in other german names. After that we began to use the hebrew names, and such as we tooke out of the holy scripture.

For fir-names or cognomina the Brittaines used to say Owen ap Harry, the son of Harry, etc. and the Irish Donald Mac Neale, the son of Neale; the Saxons used Eadgaring, the son of Edgar, etc.^c. after the manner of the Hebrewes who, keeping memory of their tribes, used in their genealogies the name of their fathers with Ben, that is the son of, added to it; as Melchi Ben Addi, the son of Addi, and the like. So the Graecians used to say, Icarus the son of Dedalus, etc.^d. The Arabians also used the names of their fathers, as Aven-pace, the son of Pace, etc. And to this day we have some names amongst us, of the norman appellation, by the like use of Fitz; as John Fitz Walter, Fitz William, the son of Walter, the son of William, etc. Some had fir-names given them, as Sobriquettes, or nick-names; as William Rufus, and the like. About the time of the norman invasion some doe hold was the beginning of fir-names; before that time they used butt single names, as appears in their subscriptions to charters, and the names of Ap Rice, Fitz-Roger, Richardson, and the like, some of which continue to this day as fir-names; and that commonly they were not used till about the time of E. 2. Some tooke their names of places, as Windsor descended from Walter Castellan of Windsor. By the booke of domesday many fir-names are expressed from places, as Adam de Grey, Robert de Oily; and this grew much in custome to name

^c W^m Malmesbury, lib. i.

Latin.

^d "Ἰκαρὸς τῷ Δαίδαλῳ. Scalig. de caus. ling.

men from the places of their feignories or habitations, and some of this sort are yett continuing; so are names from offices, as steward, constable, and many more. Divers of our fir-names are from places beyond seas, as Mortimer, Warren, Piercy, Nevill, Montfort, etc. So Courtney, St. Leger, Fiennes, etc. So Bruges, Odingels and others, from places in Normandy, France, Flanders, etc. from whence some who left these names came in with W. 1. Some are of more english extraction, as Clifford, Willoughby, Wentworth, Mostyn, Trevor, etc. Butt although the originall of names with us, and elsewhere, be dubious and various; yett generally the use of them is certaine to denote the person named, and is of necessity for that end: and where members are chosen to serve in publique coun-cells, there is no meanes butt by returning of their names (as this writ commaunds) to know who are the persons impowered by this choice, to execute a trust, which none else, butt the persons so chosen and named, can doe.

C H A P. LXI

Knights, cittizens, and burgesſes.

TH E S E are the representatives of the commons of the whole kingdome, and are all of them of the ranke of commons : yett some have collected, that formerly there ſeemes to have bin a diſtinction among them, and that the knights did act ſome matters by themſelves, and the cittizens and burgesſes by themſelves ; which they doe ground uppon an antient act of parlement to be found in the old booke of our printed ſtatutes, in Edward the third's time ^a, which pardons to the knights, and to all other, all fines made to the king for not attending him into Gascoigne ; and the graunt made by the knights for every towne an armed man, and the graunt made by the cittizens and burgesſes for the citties and burghs, att the parlement att Wincheſter ; by which act they underſtand a diſtinct graunt then made by the knights for the townes which ſent no cittizens or burgesſes to parlement ; and another graunt by itſelfe from the cittizens and burgesſes for thoſe places for which they ſerved. And this is further noted from a record in parlement ſhortly after, wherein it is ſayd, that to the king's propoſitions the knights by themſelves gave advice, etc ^b. Butt theſe are conjectures of what doth wholly differ from the preſent uſage and conſtitution of the houſe of commons att this day, and for many ages paſt ; wherein

^a 4 E. 3. c. 5.^b 6 E. 3. rot. parl. n. 3.

there is no ſuperiority or inferiority, butt in that houſe all are equall. Whatſoever their reſpective rankes and degrees may be in other places, when they enter into the houſe they muſt leave their precedence att the dore, and all other their titles butt members of the houſe of commons. In appellations they have their titles given them there, as when a lord by courteſy ſtands up to ſpeake, they uſe to call uppon him by the name of my lord ſuch a one, and ſo to a knight or gentleman; butt in their ſitting or ſuffrage there is a parity: they all ſitt as they come; no lord or privy-counſellor, or knight or officer hath of right any ſeate there butt as he takes it when he comes in, and finds it convenient for him. Though it is true that of later times ſome privy-counſellors, being members of that houſe, uſed commonly to ſitt neere the ſpeaker's chayre, and to have cuſhions, which in reſpect to their perſons and qualities was connived att: yett ſometimes other members would take the boldnes to ſitt in thoſe places; and ſome would reflect uppon it in their ſpeeches, as an innovation, and reprove it.

There is alſo an equality in their ſuffrages. If a burges ſtand up to ſpeake, and att the ſame time a lord or knight ſtand up alſo, he who was firſt up in the ſpeaker's eye ſhall have the priviledge of being firſt heard, without regard to the quality or title of the other: and every cittyzen and burges hath an equall vote with the knights, and the knights with them; the major part reſolves the queſtion without diſtinction of quality. And every knight, cittyzen, and burges is not only a representative of that countey, citty or burrough which elected him, butt of the whole kingdome; and their votes bind all other people as well as thoſe of the perticular counties, citties, and boroughs where they were elected. Butt in the proceedings of the lords houſe there is ſome difference: every lord hath his place according to his ranke and title, and in that order they paſſe

pass their votes ; butt the vote of a baron is of equall force with the vote of a duke ; and the majority of votes with them also makes the resolution, as it did in the jewish sanhedrim and in the senates of all nations. The presbiters or elders of the sanhedrim were all equally stiled sapientes, and had alike the title and priviledge of presbiters : no man's vote was of more force than another's ; butt their seats in the court were in a certaine ranke or forme, and every one's place on each side of the prince and father of the sanhedrim (who sat in the middle) was certainly knowne ; and the prince or father of the senate had noe negative vote, or more binding than the votes of every one of the elders had besides.

In all the roman assemblies for the publique elections of magistrates, or making of lawes, such was the equality among them, that every man's suffrage was of like force ; and the major parte still gave the resolution of the matter in debate^c.

It would be too long to recite the like proceedings in the senates of the Graecians, and of other nations. The way to determine all matters of difficulty can be no other butt force, or majority of suffrage ; and in suffrages there is allwayes an equality. As the spirituall barons of England answered the temporall lords in the parlement of H. 2. where the debate was about giving judgement uppon the archbishop Becket^d ; the temporall lords told the spirituall lords, " You ought to pronounce the sentence, it belongs not to us ; we are laymen, you are ecclesiasticall persons as he is, his fellow-priests, his fellow-bishops : " to this the bishops answered the temporall lords ; " Nay it is rather your duety not ours, for this is not an ec-

^c Rosinus Antiquit. Rom. lib. vi. p. 258.
passione Th. Cant. temp. H. 2.

^d Stephanides MS. de vita et

cleſiaſticall butt a ſecular judgement; we ſitt not heere as biſhops, butt as barons; we are barons, and ye are barons; we are heere peeres.“ Butt att length the biſhops pronounced the ſentence.

In like manner every burges may ſay to a cittizen or knight, and they againe to one another, “ We are commons, and ye are commons.” All in that houſe are peeres, knights, cittizens and burgesſes, without diſtinction in that place, are all commoners.

• Nos barones et vos barones, pares hic ſumus.

C H A P. LXII

So to be chosen.

THE acts of parlement formerly noted have given direction for the manner of election of these knights, cittizens and burgesſes to the parlement; and they require no repetition. This “so to be chosen” relates only to the members of the house of commons. It will be fitt likewise to confider ſomewhat of the election, or right of ſeate and ſuffrage of the members of the house of peeres, of whom it hath bin before ſhewed, that they fitt in parlement by right of primogeniture, not by a popular election: yett they may properly enough be ſaid to be elected by the law, or by the king. The law may be ſaid to elect them to be ſenators, when it giveth that priviledge to all thoſe who hold their lands by the tenure of a barony; wherof the learning is not now ſo much in uſe as it hath bin formerly. The king may be ſaid to elect theſe members of the lords houſe, whereſoever he chooſeth any perſon (as he may whome he pleaſeth) and creates him a baron; which he may doe by hiſ writ, or by hiſ letters pattents: and the perſons ſo created are therby elected by the king (in effect) to be members of the house of peeres in parlement, and ſhall injoy the rights and priviledges of a member of that houſe.

When

When the persons are thus (as it were) elected by the king's writ, or patent, into the dignitie and ranke of the peeres of England, afterwards both they and their heirs, according to the limitation of their respective writs or patents, shall injoy and exercise the rights and priviledges by the law appertaining to every peere of England, both as members of the lords house in parlement (which is very great), and other rights also belonging to them out of parlement.

THE end why the sherife is commaunded to cause the names of the knights cittizens and burgeffes, who shall be chosen to the parlement, to be inserted in indentures to be returned into the chancery, is, that therby the parlement may be certefyed who are their members impowred to act with them, and whether the numbers of them be according to right ; otherwise one countey, citty or borough might returne 4 or 6, where they ought to choose butt two or one ; or returne butt one where they ought to choose two : butt this inserting of the names prevents those defaults or errors, discovers who are members of parlement and who not ; and declares the numbers of them, which are very great.

It hath bin observed in this nation, that when the publique affayres have bin guided by the advice of publique counsellors, and those consisting of great numbers, that prosperous successe was seldom wanting to such counsellors : butt when those matters were steered by a few minions, or junto little counsellors, miscarriages and mischiefes have too often insued. And it is noted, that when there is the best appearance of members of parlement, they may well be called, and hoped to prove, a multitude of counsellors giving to the people safety *.

* 4 Instit. Co. p. 1.

The certainty of the number, of members of our publique coun-
cells, is not easily to be found in the more antient times ; butt it hath
bin various, according to times, occasions and emergencies.

When Mempricius delivered his opinion in the publique councill
asssembled by Brute, it is said, “ that all the multitude assented to
it^b :” who it seemes were present in the councill att the debates,
assenting to the resolutions ; and were so great a number, that they
are called a multitude.

The faxon king Ethelulth is said to give the tenth part of all his
realme to God and his saints : and a charter therof was past in a
publique councill, “ there being present, and subscribing to it, all
the bishops of England ; also Burrede king of Mercia, and Edmond
king of the East-Angles, and of abbots, abbeesses, dukes, earles and
nobles of all the land, and of other faithfull people an infinite multi-
tude ;” surely a very great number^c.

The danish king Cnute is said to hold a publique councill, wher-
in divers lawes were made ; and that there were present the arch-
bishops and bishops, 7 dukes, 7 earles, “ diverse abbots, with many
soldiers, and a great multitude of people^d.”

King Ethelbert is said to graunt land to the church of Can-
terbury, by “ common councill, as well of the clergy as of the
people^e ;” which could be no small number in that assembly.

^b Galfrid. Monumeth. Tota multitudo acquievit. ^c Ingulphus, p. 862.
an^o 855. Praesentibus et subscribentibus episcopis Angliae universis, nec non Burredo
Merciae, et Edmundo Est-Anglorum rege, abbatum et abbatissarum, ducum, comitum,
procerumque totius terrae, aliorumque fidelium infinita multitudo. ^d Hoveden.
Spelman. Concil. p. 534. — Cum quamplurimis gregariis, militibus, ac populi multitu-
dine copiosa, ^e Spelman. Concil. p. 118. Communi consilio tam cleri quam
populi,

The marryages made between the Brittainis and Saxons were agreed upon by king Ina and the rest, by common counsell and assent of all the bishops and princes, nobles, earles, and of all the people of the whole realme^f.

King Offa is said to grant lands to the church of St. Alban, in a publique counsell; and the charter was subscribed by 9 kings, 15 bishops, and 20 dukes, besides others of lesse degree: and the consent of the people, and of the whole people, is frequently mentioned in the histories of the faxon kings, in their publique counsell; which implyes great numbers in them^g.

To a publique counsell held by king Ethelred, uppon a great question of title, it is said, that "dukes, princes, governors, rhetoricians, and lawyers did come from all parts^h;" which Mr. Prin and others hold to have bin only auditors: butt princes, dukes and governors, doe not use to be auditors only in counsell; and rhetoricians and lawyers are, without distinction, mentioned to be with them in that counsell.

Butt to passe to the next stage. In the 4 yeare of W. 1. there were 12 men returned out of every countey, to the parlement; who showed the customes of the kingdomeⁱ.

King H. 1. is said to call, to his parlement att Salisbury, the "princes of the priests, and of the rest of the people;" and that there it was agreed, "who of the priests, and who and how many

^f An^o 720. Spelman. conc. p. 219.

^g An^o 794. Stowe's chronicle.—

An^o 863, 866, 905, 1021, etc.

^h MS. de operibus beati Ethelwoldi. Duces,

principes, satrapes, rhetores, causidici, ex omni parte confluxerunt.

ⁱ Hist.

cor. temp. Seld. 2 Tit. hon. p. 701.

of the rest of the people, should be called to the councells :” where it seemes the numbers were determined, although not transmitted to us^k.

In the time of H. 2. were reckoned 250 barons: and doubtles there was then a great number of them, or of such as held by barony or part of a barony and did come to parlement, besides the abbots and regular barons; the alteration wherof hath bin, in part, before noted, and will be proper to another occasion.

In the 49 year of H. 3. besides the commons, were summoned 65 abbots, 35 priors, and the master of the Temple; who with the bishops, temporall lords and commons, made up a large number of the members^l.

In E. 1. time, besides the usuall members of parlement of Englishmen, there is mention of praelates and others of the clergy, earles, barons and deputies for the commonaltie of Scotland, appointed there to be chosen, and to come to the parlement of England^m. Some hold, that they were only to consult about the affayres of Scotland, and not as members of our parlement; wherof the record itselfe will give the best light.

It hath bin before noted, that in H. 3. time and other kings reignes since, there was sometimes butt one knight, sometimes 3, sometimes more summoned and returned to the parlement; as is inserted in the rolles of summons.

^k Polydor. Virgil. p. 187. Tam sacerdotum quam reliqui populi principes. — Qui ex sacerdotum coetu, quive quotve ex reliquo populo vocari deberent ad consilium.

^l 49 H. 3. Rot. parl. m. 15. dorso.

^m 33 E. 1. Rot. claus. m. 10. dorso.

In 6 E. 3. there came to the parlement, of the clergy only the archbishop of Yorke and two other bishops, and two abbots. In the 46 year of E. 3. to the parlement att Winchester "were summoned to come, of the clergy, only 4 bishops and 4 abbots." In the 50 year of his reigne all the lords appeared in person, and none by proxie, and this was called "the good parlement".

It seemes that in the time of R. 2. was no. great appearance of the members of parlement, butt their numbers were smalle; perhappes bicause of the difficultie and troubles of those times, men were willing to sitt quiet, and did not labour (as some have sufficiently done att other times) to be chosen parlement men: wherupon an act was made, that all persons and commonalties, summoned to parlement, shall come as of old times; and those who absent themselves without honest excuse to be amerced, and otherwise punished^o.

In H. 4. time the usuall numbers appeared, and served in parlement.

Att a parlement holden before the duke of Bedford under H. 5. there appeared butt 30, in all, of the lords spirituall and temporall^p.

In H. 6. time, as the chancellor instructs the prince, the statutes of England were made not by the wisdom of one, or of 100 counsellable men, butt of more than 300 chosen men^q.

^a 6 E. 3. Rot. parl. n. 8. — Tho. Walsingham, f. 186. De clero moniti sunt venire, 4 episcopi et 4 abbates tantum. — 50 E. 3. Rot. parl. Parliamentum bonum.

^p 5 R. 2. stat. 2. c. iv.

^r 7 H. 5. Rot. parl.

^q Fortescue de lau-

dis. leg. Angl.

In E. 4. and H. 7. time, the usuall numbers continued in parlement.

In H. 8. time, uppon the dissolution of abbies, all the abbots and priors were taken out of the lords house.

In all times the kings added whome they pleased to the number of the lords, by bestowing honors and titles. So they did, and may as they please, adde to the house of commons by graunting, to what townes they thinke fitt, the priviledge of sending members to that house.

About the yeare 1629, the number of the bishops was 24; of the temporall lords 106; and of the commons in parlement 493^r.

In the beginning of the parlement 16 Car. 1. and att this present the number of the commons is above 500; and att this time the lords are 140^r.

It will be time a little to consider the numbers of the publique councells of the Jewes, which sometimes were very great. Some doe conjecture, that the custome among the Hebrewes was that whosoever would might come to their extraordinary generall assemblies; and that great multitudes of all sorts did many times resort unto them, together with their heads or elders: and being all mett together, each family or tribe (for the distinction wherof they were very exact) did appoint and select certaine persons to consult, debate and act in their names, which the great body did afterwards approve or disallow, as they thought good; and that generally the

^r Co. 4 Instit. ^r N. B. This number is taken from Dugdale's list of peers summoned to parliament, 13^o Car. 2. Mr. Whitelocke having left a blank for the NUMBER in the original Manuscript. (M.)

heads of families did performe this service, and were in the nature of deputies of the people. Butt the number of persons att their generall and publique assemblies was cleerly uncertaine, sometimes more and sometimes fewer; and that may be apparent enough uppon fundry texts. As [at one time] "the heads of the tribes mett;" in another time, only "the chiefe fathers of the families'." In the institution of the sanhedrim, and in divers other places, only the elders are mentioned. And divers are the descriptions of the persons in divers texts: as "all the heads of your tribes and your elders, the heads of the people and the tribes, the princes of the congregation, the whole congregation, all Israel, their elders, heads, judges, officers. David assembled all the princes of Israel, the princes of the tribes, and the captaines of the companies that minister by course, and the captaines over 1000, and over 100, and the stewards with the officers, and with the mighty men, and with all the valiant men; a great and numerous assembly." The like was held by his son Solomon, and by his graundchild Rehoboam, and by king Hezekiah, Josiah and the rest of the kings: likewise in the babylonish captivity, and under the Romans, they had their publique councells consisting of great numbers of persons; butt the certainty of those numbers is not made out to us, nor is of the concernement of much time to inquire into it'.

The only number which I find to have bin certaine and constant, in the publique councells of the Jewes, was that of the 70 elders in their great sanhedrim.

* Num. xxx. 1.—Num. xxxvi. 1.—Deut. v. 23.—Deut. xxxiii. 5.—Jof. ix. 15, 17. and xviii. 1. and xxii. 12. and xxiii. 2. and xxiv. 1.—1 Chron. xxviii. 1.

* 1 Ki. viii. 1.—2 Chro. v. 2.—1 Ki. xii. 1.—2 Chro. xxx. 2. and xxxv. 8.—Mat. ii. 4.—and xxvii. 1.—Mar. xv. 1.—Lu. v. 17, and 26. and xxii. 66.—Jo. xviii. 28. Acts v. 5.—and xxi. 27. and vi. 12.—and vii. 2. and xv. 2. and xvii. 15.—1 Cor. v. 4.—1 Tim. i. 1.—1 Pet. v. 1.—Rev. iv. 4, etc.

In the graecian commonwealths we find the number of senators to be varied sometimes, as new lawes uppon new occasions did require. In Athens the chiefe part of the magistracy consisted in their senates, one wherof consisted of 500 men, another of 1000 men, another of ten presidents only^u. The councill of the Areopagites some will have to consist of 31, others of 51, and 9 ephetae^v added to them; and others mention the councill of 300 of the Areopagitae: and their authors affirme the numbers to have bin uncertaine^x.

The first number of the senators of Rome was 100, chosen by Romulus; and he added to them afterwards another hundred; and Tarquinius Priscus made them up three hundred^y: after that Caesar brought them up to the number of nine hundred.

The number of members of the german diet is counted by Gothofred to be about four hundred: butt as some of any of the estates, through sicknes or other occasions, may be absent; so their number is increased or diminished in those times.

And the like is in the ricksdagh of the Swedes and Gothes, whose totall number, if all should appear, amounts unto neere 700; butt through absence is oftentimes varied, and becomes uncertaine.

^u Gothofred. lib. i. p. 699.—Ibid. p. 700. ^v Quere, whether the word Ephetae should not be read Archontes? Vid. Potter Archæologia græca, vol. ii. p. 102. (M.)

^x Æschil. Eumenid. — Petit. ad leg. Attic. p. 240. — Meurs. in Areopag. c. v.

^y Martin. Philetic. in Cicer. — Godwin. de Antiquit. l. b. i. §. 2.

So doth the venetian senate, which exceeds all other in the greatness of the number, being above three thousand; though alwayes lessened and varied by absence of some of the senators.

In the antient assembly of the estates in Fraunce, their number was very great, and supposed to be about fixe hundred^y. So it was in the senates of other nations, wherinto a more curious inquiry is not necessary. This may show, the generall opinion of extraordinary assemblies, in publique councill, was to have them great and numerous.

* Thuanus.

C H A P. LXIV

In certain indentures.

TH E R E are two sorts of deeds, or ordinary conveyances, in our law^a. The one is called a deed polle, which is plaine without any indenting, so called bicause it is cutt even or polled: the other is called an indenture, or deed indented, which is a writing conteining a conveyance, or agreements between parties; and is indented on the top or side, answearable to another that likewise comprehendeth the same matter; and is called an indenture for that it is indented; and the greeke word for a writing of severall persons joyning together hath some resemblance to it^b.

In antient time such a deed was called a charter of cyrographe, or hand-writing, and a common charter^c. And all deeds must be written either as deeds polle, or indented. Indentures may be of two, three, four, or more parts; and all the parts are butt one in lawe, and each part is of equall force with the other^d. Butt these points may be more proper for another treatise.

Our antient author of law Bracton, and with him Fleta, agrees in the division of deeds, that some of them are regall, others are

^a Co. on Litt. f. 229.

^b Συγγραφον.

^c Britton. f. 100.—Fleta.

lib. iii. c. 14. Charta cyrographata. Charta communis.

^d 34 H. 6. 24.—9

H. 6. 35.—35 H. 6. 34.—9 E. 3. 18.—Plowd. 134.

private : of the first sort are those directed by the act of parlement 1 E. 3^e. which enacts that the sherifs and baylifs, and all that take indictments in their turnes or elsewhere, shall take such indictment by rolle indented, wherof one part shall remain with the indictors, and the other part with him that taketh the inquest. Likewise in those times the course of levying of soldiers, to serve the king, was by indentures between the king and the persons who were to rayse them ; wherby the numbers to be rayfed were sett downe, the time of their service, and their wages.

The king's officers of the exchequer, wardrope and other offices, frequently take and deliver out goods for the king by indenture, that the contents and values of them may be knowne : and in the receipt of the exchequer, and other offices, very great numbers of such indentures both of old and later times are layd up. Butt of this kind of learning perhappes a little may be tedious ; it is enough to note that this kind of writings is usefull, and generall, as well in publique as in private matters.

* Bracton. lib. ii. f. 33. b.—Fleta. lib. iii. c. 14. Chartarum alia regia, alia privatorum, etc.—1 E. 3. c. 17.

C H A P. LXV

Therof to be made.

THE making of an indenture is the writing of it, the signing, sealing, and delivery of it as the deed of the parties; and then it is an indenture. The writing of it must be in parchment, or paper: for if a writing be made upon a piece of wood, or linnen, or in the barke of a tree, or on a stone, or the like, though it be sealed and delivered, yett it is no deed unlesse it be written on paper or parchment^a; because the writing upon these is least subject to alteration, or corruption. And if any of the perticulars before mentioned be wanting, the indenture is no deed nor legall instrument, or binding any party: butt if all those perticulars be observed, then it is properly said to be made, then it is factum which we properly in English render a deed; and from the making of it, which gives the effence and force to it, it is called a deed. The matter (the “therof”) of the deed, in ordinary conveyances, is of such things as the agreement of the parties causes to be the subject of it; as a conveyance of lands, etc. a bargaine and sale of them, a contract betweene them, or covenants concerning things done or to be done. Butt the matter, (or “therof”) of the indenture commaunded by this writ to be made, is the election of the knights cittizens and burgessees, and the names

^a 14 E. 2. Ley 49.—4 E. 2. Fines 116, et Ley 68.—2 R. 2. Det. 4.—27 H. 6. 9. F. N. B. 122. l.

of those who are elected: and the forme of the making therof is usually before-hand prepared by the under-sherife, or some other officer intrusted, with blankes for the names of the parties to be chosen. And it beginnes with the wordes, "This indenture made," etc. as all other indentures doe. The election (which is the "therof") is fully to be expressed, in the indentures, to be uppon the day of the countey court, and by the freeholders of the countey; and so of cittyzens and burgeses, the time and place of the election of them; and the names of the persons elected, with other perticulars, pursuant to the direction of the writ.

The making of an indenture is the writing of it, the signing, sealing, and delivery of it as the deed of the parties; and then it is an indenture. The writing of it must be in parchment, or paper: for if a writing be made upon a piece of wood, or linnen, or in the bark of a tree, or on a stone, or the like, though it be sealed and delivered, yett it is no deed unless it be written on paper or parchment; because the writing upon these is least subject to alteration, or corruption. And if any of the perticulars before mentioned be wanting, the indenture is no deed nor legal instrument, or binding any party: but if all those perticulars be observed, then it is properly said to be made, then it is factum which we properly in English render a deed; and from the making of it, which gives the essence and force to it, it is called a deed. The manner (the "therof") of the deed, in ordinary conveyances, is of such things as the agreement of the parties causes to be the subject of it; as a conveyance of lands, etc. a bargain and sale of them, a contract between them, or covenants concerning things done or to be done. But the manner (the "therof") of the indenture commanded by this writ to be made, is the election of the knights citizens and burgeses, and the names

P A H C.

C H A P. LXVI

Between you and those present.

THIS indenture is to be of two parts, which our lawyers therefore call an indenture bipartite. It is to be between the high sherife, of the one part, and the freeholders of the countey qualified to be electors, on the other parte; and so the indentures are to be made naming the high sherife, and a convenient number of the principall gentlemen and others of the countey; and is to this effect.

This indenture, made the first day of May in the 13 yeare of the reigne of our soveraigne lord Charles the second, etc. between A. B. knight, high sherife of the countey of Bucks, on the one part, and B. C. D. E. F. G. on the other part, witnesseth that, in pursuance of his majestye's writ bearing teste, etc. after proclamation therof made on the said first day of May instant, according to the tenor of the sayd writ, we the sayd B. C. D. E. F. G. freeholders and resiants of the said countey, present on the said first day of May att Aylesbury in the said countey, being in the full countey court, have chosen N. N. and R. R. esquires, to be knights of the shire, to serve for the sayd countey in the parlement appointed to be held the eighth day of this instant May att Westminster: and by these presents have given and doe give unto

unto the said N. N. and R. R. full and sufficient power, for us and for the commonaltie of the sayd countey, distinctly from us, to doe and consent to such matters which att the sayd parlement, by the common councell of the kingdome, shall happen to be, by the favour of God, ordeined. In wittnes wherof the said parties to these presents have interchangeably sett their hands, and seales, the day and year above written.

One part of this indenture the sherife seales, and delivers to the freeholders; the other part is sealed, and delivered by a competent number of the freeholders, and left with the sherif to be returned.

C H A P. LXVII

Att such election.

TH E parties to the indenture must be such as were present att the election ; else they cannot testify the same, according to the forme in the last chapter.

Some have bin so curious, that they would not allow any freeholder a voice in the election, unlesse he were present att the time of the proclamation made for the election ; the words of the writ being, “ By those who shall be present att such proclamation ;” and therefore a question hath bin. Uppon taking the polle, which held some dayes, one of the competitors sent for more freeholders into the countrey, who came in a day or two after the polling was begun, and before it was ended ; butt were not present att the beginning of the election, nor att the proclamation. Whether these freeholders should be admitted, to have their votes in the election, was debated ; and I know not yett, whether it hath bin determined : the words of the writ (which are also the expresse words of the statute^a) seeming to be against it ; that they shall not have votes in the election, nor can sett their hands as electors to the indentures. Butt practise seems to favour the other opinion ; that if freeholders appear att any time of the election, before the sherife hath determined it,

^a 7 H. 4. c. xiv.

that they shall have votes, and consequently may seale the indentures. Butt all cases and questions of this nature are taken (and perhappes too frequently) to be both within the affection, and judgement, of the committee of parlement named of priviledges.

In the same forme, mutatis mutandis, indentures use to be made by the head officers of citties and boroughs, between them and the cittisens and burgeses resiants, present att the respective elections, testifying the same; and are generally returned to the high sherife, and by him made part of his returne of the election of members of parlement in that countey, both knights cittizens and burgeses.

Some have bin so curious, that they would not allow any freeholder a vote in the election, unless he were present at the time of the proclamation made for the election; the words of the writ being, "By these who shall be present at such proclamation," and there fore a question hath bin. Upon taking the polls, which held some dayes, one of the competitors sent for some freeholders into the countrey who came in a day or two after the polling was began, and before it was ended; but were not present at the beginning of the election, nor at the proclamation. Whether these freeholders should be admitted, to have their votes in the election, was debated; and I know not yett, whether it hath bin determined: the words of the writ (which are also the express words of the statute) seeming to be against it; that they shall not have votes in the election, nor can sett their hands as electors to the indentures. But practice seems to favour the other opinion; that if freeholders appear at any time of the election, before the sherife hath determined it.

C H A P. LXVIII

Whether those to be chosen.

LITTLE is left to be said concerning elections, of members of parlement, by the people. It is an excellent direction which is mentioned by the great rabbi to have bin the practise of his countrymen, in the choice of members of their great sanhedrim, which he thus relates :

“ We have learned from the wise men, that it was the custome for the great sanhedrim^a to send into all the holy land, and to inquire who was a man, and fearing sin, civill, of approved judgement in discuffing of matters, and gracious among men. Such a one they made first a judge in an inferior court, from thence they removed him to a higher place of magistracy, att length he was taken into the great sanhedrim.”

How different from this course hath it bin att some times, and in some places, with us. The Hebrewes sent throughout the holy land to inquire for members, and who were fittest for it: heere such as desire to be members of parlement send throughout counties and places, to inquire who will give their votes to choose them; and to sollicite and invite the freeholders and electors for that

^a Maimonides. Halach Sanhedrim, c. ii.

purpose. They inquired who were wise : some heere inquire who will be for me, wise or not. They inquired who was fearing sin : we heere, who loves drinke and victualls, and will be gained for me, though by finning in the riot therof. They inquired who were civill : heere, who will be debauched, that I may gaine his voyce therby. They inquired who is of approved judgement : we, who will be for me be it right or wrong. They inquired who were gracious among men : we, among whom am I gracious ; whether I be deserving or not, who will be for me. Butt these things may give offence to be remembred, though I hope to none butt conscuous men ; and I doe heartily wish and humbly pray, that such unworthy courses may be unpractised, and for ever heerafter may be forgotten.

which he thus relates :

" We have learned from the wise men, that it was the custom for the great Sanhedrim, to send into all the holy land, and to inquire who was a man, and fearing sin, and of approved judgement in discussing of matters, and gracious among men. Such a one they made first a judge in inferior court, from thence they removed him to a higher place of magistracy, and lastly he was taken into the great Sanhedrim."

How different from this course hath it bin at some times, and in some places, with us. The Hebrewes sent throughout the holy land to inquire for members, and who were fittest for it : heere such as desire to be members of parliament send throughout counties and places, to inquire who will give their voice to choose them : and invite the freeholders and electors for that

P. A. H. C.

" Maimonides, Mishach Sanhedrim, c. ii.

E 2

purpose.

C H A P. LXIX

Be present.

AT T the time of the election the parties to be chosen are not necessarily to be present, butt their absence is dispenced with by this writ: yett there are not many in our times who will make use of this indulgence. I speake not to reproach any of the honourable and worthy members of our parlement, most deservedly chosen whether present or absent; wherof most of them cannot be too much honored. Butt I intend a caution only to some few who may declare too much ambition, who will be personally present themselves, besides their letters, messages, agents and undue sollicitations and means, to procure themselves to be elected.

I know that custome brings the candidate into the field, accompanied with his friends and followers in as large numbers as he can make; and there the affections of his countrymen appeare towards him: and it is fitt they should know, att least by sight, him whome they choose, and so highly intrust.

Butt for a man to present himself to the freeholders with speeches and courtings, and as one by his owne appearance, and in his owne judgement, fitt to be imployed by them in the greatestt affayres and highestt trust wherof any one is capable; to be present not only before and in the time of the election, butt when it is ended,

ended; to entertaine and careffe those who are of his opinion that he is wise, and able and worthy to be a parlement man, and this treating to be unto debauchery, and the expence of many hundreds of pounds which perhappes some cannot so well spare as others: this favours too much of ambition; and where there be such competitions, he is too often judged worthiest, who spendeth most prodigally; where the meat, and especially drinke, becomes the strongest argument, and wherof some electors may be more able to judge than of the abilities of senators. In the same manner it is in some citties, and boroughs: butt there the persons chosen are not so constantly present as in countey elections. These are low means to compasse ambitious ends; to make use of frogges to become an eagle.

Ambition is truely stiled the ape of charity. "Charity is patient for eternall things: ambition, for transitory things." "Charity is good to the poore: ambition, to the rich^a." Charity suffers for trueth: ambition, for vanity. Ambitious men will be present, and industrious to attaine their glory. The viscount of St. Albans saith, that "ambition is like choller, which is an humor that maketh men active, earnest, full of alacrity, and stirring^b." His opinion is, that "it is not good to use such natures att all: for if they rise not with their service, they will take order to make their service fall with them." He allowes it in military men: and to take a foldier without ambition, is to pull of his spurres. An ambitious man is like a feeled dove, that mounts and mounts, because he cannot see above him. He adviseth princes and states to choose such ministers as are more fencible of duety, than of rising; and

^a Charitas patiens est pro aeternis, ambitio patitur omnia pro caducis. Charitas benigna est pauperibus, ambitio divitibus.—Petr. Rev. ^b L. St. Alban's. Essay xxxvi.

such as love buisnes rather uppon conscience, than uppon bravery; and to discerne a buisy nature, from a willing minde.

An ambitious presence, to gett to be chosen a parlement man, is resembled to that of Paschalis, who describes it to be "evidence of a mind dull, servile and base;" humbly supplicating, and miserably craving what cannot be had butt from so many men^e.

There are too many examples in our owne, and other stories, of ambition: wherof the last is surely the greatest, and prosecuted through the worst of meanes; butt I shall hope the same, through royall clemency, will be for ever buried.

Ambitious men are compared to Nimrod and his complices, of whom St. Cyrill saith, they built for themselves, not for God; not for the glory of his name, butt to make themselves a name^d. What will not the pride of man's heart doe (saith he) indulging its own ambition? It tooke early roote in our frayle nature, from our first parents who therby lost paradise; Nimrod, his language; and the evill angels, heaven. We must take heed of that ambitious humor of the pharisees, who loved the prayse of men more than the prayse of God^e: and of their sect are most ambitious men.

Charron sayes, that "ambition is a thirst after honor and glory^f." Some in our time seeke to quench it by too much good liquor; that it is a gluttonous and excessive desire of greatnes, witnesse the entertainments which attend it.

Seneca saith "an ambitious man hath this vice, not to looke backe^g." And it is a greater griefe to him to suffer one to have

^d De Virtut. et Vitiis Ambitio est verum specimen ingenii stolidi, servilis, fordidi, etc.

^e Gen. xi. 4.

^f Jo. xii. 43.

^g Charron de Sageſſe, lib.

i. c. 10,

^h Habet hoc vitium omnis ambitio, non respicit.

more voices than himfelfe, than it is pleasure unto him to leave fo many thousands behind him. “ We are naturally greedy of authority and power, and run headlong to the fatisfying of our defires ^h :” and with fuch violence doe fome men runne, that they breake their owne neckes.

One calles it the fhirt of the foule, as being that which we putt of laft: according to that of Tacitus; “ the laft vice, which even the wife abandon, is the defire of glory ⁱ.” Wife men and old men will be present in the field, and canvaſſe for themſelves to be choſen to this little glory of being choſen parlement men. It is a folly, and vanity: for it is as much as if a man ſhould catch att the ſhadow, inſtead of the body; to faſten the contentment of his mind, uppon the changeable opinion of the multitude; voluntarily to renounce his own liberty, to pleaſe the humors and paſſions of many others; to be present that he may be cenſured; and to be employed to the hazard of his fortune.

^h Natura noſtra imperii eſt avida, et ad implendum cupiditatem praecepta.

ⁱ Etiam ſapientibus cupido gloriae noviffima exuatur.

C H A P. LXX

Or absent.

THE writ warrants the election of a person to be knight of the shire, though he be absent: and some hold it more honor to be absent, than present, when such a trust is conferred on them. Except in some elections in citties and boroughs, where there is no need of the presence of the party to be elected bicause the letters or messages of some lords of the town, or great men, are sufficient to procure the choice of whome they please to nominate; and therefore these may the better be absent: in so much as the story goes of a gentleman, in the beginning of the last parlement, who being asked for what towne he served, answered, that truly he had forgot the name of the towne; butt that such a gentleman, naming another member, a great man, knew the name of the towne; and that he was absent att the election. And if he had bin also absent from the house; the publique would not have suffered much therby.

The statute of R. 2. forbids the absence of any members, uppon amerciament and punishment^a. Butt we are now uppon absence att the election; which some are out of modesty, and humility, which are the true and ready wayes to honor. To be sought out for preferment is much more honorable than to seeke out for

^a 5 R. 2. c. iv. ft. 2.

preferment: and to be chosen after the manner of the Hebrewes, to send out into all the holy land to inquire and seeke out able men, to choose them members of their sanhedrim; than to send out into all the countrey to seeke for voices, to choose a man to be a member of the parlement. And though ambition be commonly praeferred before modesty by the world, it is no marvell, being the more worldly. It was good advice that Jehoash king of Israel gave to Amaziah king of Judah: "Glory in this, and tarry att home; for why shouldest thou meddle to thy hurt ^b?" And St. Gregorie's judgement is, that places of government are to be denyed to those that desire them, and graunted to those who would avoid them ^c. Seneca bids be absent, where he sayes: "Leave thy seeking after preferment, which is a thing to be feared, vaine, aery, having no end;" butt commonly causing rancors and ill will amongst countrymen and friends ^d. Butt who absents himselfe, and yett is chosen, comes to the imployment with double honor.

When a flatterer tooke it ill, that he was not sent ambaffador into Asia, Scipio Africanus wished him to cease wondring att it: for (said he) I lately intreated one, to whom I suppose my honor is deare, that he would undertake this ambaffy; and I could hardly perswade him to it. He that makes suit for great imployments, renders himselfe the lesse worthy of them; he who is sought to that he would accept them, is commonly fittest for them. All deserve not honor, who desire it; and few who merit honor doe aske for it. A man is not the lesse worthy to be chosen a knight of the shire, because he is absent att the election. "He is to be sought out, who is best deserving ^e." And the modesty of absence merits the more

^b 2 Ki. xiv. 10.

^c Greg. in pastorali.

^d Seneca Epist. lxxxvi.

Relinque ambitum, timenda res est, vana, ventosa, nullum habens terminum.

^e Quaerendus qui mereatur.

approbation of his fittnes. It is said of the brittish king Babtrucus, that he was “ a modest and prudent man^f :” and these qualities usually are companions. The apostle gives good rules for modesty : “ I say, through the grace given unto me, to every man that is among you, not to thinke of himselfe more highly than he ought to thinke^g ; but to thinke soberly.” And in the same chapter, “ Be kindly affectioned one to another, with brotherly love, in honour preferring one another. Mind not high things, butt condescend to men of low estate : be not wise in your owne conceits^h.” Excellent rules for our elections, as well as conversations : in honor to preferre one another ; not to mind high things ; not to be wise in our owne conceits. If these rules were observed, there would not be such competitions as this time produceth. The best demeanor is that which the apostle exhorts the elders : “ Neither as lords over God’s heritage ; butt being ensamples to the flocke.” Modesty is like a glittering starre, the higher the person is, whome it graceth, the brighter it shines : as Commynes notes, “ that it becomes all men of all rankes, especially men of chiefeest and highest degreesⁱ.” And his fellow-historian Tacitus affirmes, “ that the reputation of modesty is not to be despised by the highest of mortall men, and is esteemed by the Gods^k.” Caesar himselfe, as to his soldiery, was of the opinion, that “ modesty is no lesse to be desired in a soldier, than virtue and magnanimitie^l.” Much more commendable and proper is it in civill officers. The greeke poet comprehends all in the prayse of this virtue, where he saith :

^f Galfr. Mon. Vir modestus et prudens.

^g Rom. xii. 3.

^h Ver.

10.—Ver. 16.

ⁱ Commin. lib. i. Imprimis vero principes viros.

^k Tacit. Annal. lib. xv. Modestiae fama neque summis mortalium spernenda est, et à Diis aestimatur.

^l Caesar. Comment. lib. vii. Non minus in milite modestia, quàm virtus atque animi magnitudo, desideranda est.

As in a storehouse there doe lye
All virtues in sole modesty ^m.

The temper of Arcefilaus is a good rule for our parlement men;
“ keeping modesty in his affirmation of things, and avoyding envy
in his contradictions ⁿ.”

It is recorded of Otanes, one of the 7 that had title to the
soveraignty of Persia, that he absented himselfe, and gave over to
his companions his right; uppon condition, that he and his might
live in that empire free from all subjection, and magistracy, except
that which the antient lawes did impose. And it is no unhappy
condition for an Englishman, which king James approved, to be of
an estate and degree between a justice of peace and an high con-
stable; to be free from magistracy, and quietly to injoy the comforts
of a man's private fortune and family, free from strife and envy; “ to
be in retirement without daunger ^o.” Magistracies are painfull, and
not to be desired, butt by feeble and sicke spirits: yett are they not
totally to be declined if honourably conferred, least we neglect our
publique duety, and therin also our private wellfare; “ we not being
borne only for ourselves, butt partly for our countrey, partly for our
friends, etc. ^p.”

It may be said to those who are chosen, or to be chosen, mem-
bers of parlement, whether they be present or absent att their
elections, as Archelaus said to one who asked of him a golden
plate, and he gave it to Euripides; and with this said to the other;
“ thou art worthy who didst aske the plate, though thou hadst it

^m Ταπεινὸν ἀρετῆς ἐστὶν ἢ σωφροσύνη μόνη.

ando servans modestiam, et in contradicendo fugiens invidiam.

otio sine periculo.

ⁿ Laertius f. 4. c. 6. In asseve-

^o Cicer. In

^p Non nobis solum nati sumus; partim patriae, partim amicis, etc.

not; neither is Euripides unworthy, who had it without asking." I cannot compare the employment to a golden plate: sure I am 'tis leaden, and heavy, and affords noe private advantage to any who sincerely perform the trust; which I can testify. It is good counsell given us: that if men commit a charge unto us, which we are capable of, lett us accept of it modestly, and exercise it sincerely; making account, that God hath placed us there to stand sentinell, to the end that others may rest in safety under our care^a. Lett us seeke no other recompence of our travell, then our owne conscience to wittnes our well-doing; and desire, that the wittnes be rather of credit in the court of our fellow-cittizens, than in the front of our publique actions. Lett us hold it for a maxime, that the fruit of our honourable actions is to have acted them. And after the example of the apostle, "Lett us labour, that whether present or absent, we may be accepted of the Lord".

^a Charron de Sageſſe, lib. iii. c. 42. 2 Cor. v. 9.

C H A P. LXXI

And cause them to come.

TH E election of knights cittizens and burgeffes, to ferve in parlement, would be altogither fruitles, unleffe the perfons elected doe come to parlement to performe their dueties; and this is injoynd by an act of parlement in R. 2. time, before noted: "that all perfons and commonalties, being summoned, shall come to the parlement, as hath bin accustomed of old time; and that uppon payne of punishment^a."

When the members are come to parlement, then the buisnes proceeds: and those that doe not come, unleffe hindered by sicknesse or extraordinary excuse, can hardly satisfy their consciences, that they performe their dueties. If a man have a distempered mind, or be extreamly sicke, or the like, these are just causes of excuse for not coming to the parlement, butt no cause of exemption: for he may recover againe, and then he ought to come and performe his service. If any lord or other member be so aged, impotent or sicke, that he cannot without daunger travaile to the parlement; he may excuse himselfe by the statute 5 R. 2. or he may have a licence of the king, under the great seale, not to come: butt if he recover, then he ought to come and attend^b.

^a 5 R. 2. c. 4.

^b 4 Instit. f. 44. Co. Laesam fantasiam.—16 R. 2. rot. claus. dorf.—11 R. 2. rot. parl. n. 7.—1 H. 5. n. 3.—1 H. 4. n. 143.—2 H. 4. n. 11.—9 H. 4. Indemnity des Srs et Communs.—4 H. 8. c. 8.—6 H. 8. c. 6.

Our auncestors used to come armed to publique assemblies, as to the wapentake or hundred court : which is proved, as likewise the reason of the name, from the laws of the confessor, which say ; that “ what the Angli call an hundred, that Warwick, Lincolne, Nottingham, Leicester and Northampton shires do call a wapentake ^c.” That the ruler of wapentake, holding up his launce, received from them all the league according to the custome ; for “ as many as came did all of them touche his speare with their launces ^d,” and so confirmed themselves, by the touching of their armes, publique peace being given. For in English, armes are called wepnu, and taccare is to confirme ; as it were a confirmation of armes ^e : or (which is more expresse) wapentac is the touching of weapons or armes ; wepnu is armes, and tac is touch ; therefore that assembly is called a wapentac, bicause by touching of weapons they are confaederate together. The word hath the like signification in Sweden, where att a solemne nuptialls 12 persons of quality, of kindred to the marryed partyes, are publicuely called forth, and every of them layeth his hand uppon a speare held up for that purpose ; and as twelve wittnesses, in that manner doe testify the contract of marryage then read before them : and this ceremony they call wapuntac ; the speare and other armes being called by them wapun, and tac is to touch. Tacitus relates of the old Germans, from whom our English-Saxons came, that they used to meet armed in their courts : when any one had spoken, if he were disliked they rejected it with a murmuring ; if they liked what was sayd, they shooke their speares together, which well includes this striking or touching together of weapons ; and (saith he) the most honorable kind of assent, is to commend by their armes.

^c Leg. Edouardi regis, c. xxxiii.—Quod Angli vocant hundredum, supradicti comitatus vocant wapentachium.

^d Omnes enim quotquot venissent, cum lanceis suis ipsius hastam tangebant, etc.

^e Wæpnu taccare.

Our auncestors came armed to divers of our parlements, in the time of civill distractions. That meeting at Runny-meade, neer Stanes, where the king and barons had each of them a great army, is stiled a parlement, in king John's time. So in the time of H. 3. the parlement att Northampton was summoned, and held by force; the members comming thither armed. And att his parlement att London, an^o 1238, thither (saith the story) the lords did come armed: and so they did to severall parlements att Oxford, and att London, in this king's time^f.

In his graundchild E. 2. time, they came armed to the parlement to effect their purposes. The like was done in R. 2. time, as the historians of that time at large relate^g. Butt in these, and severall other meetings in parlement, when they came armed it was to mainteine their parties, and compell their purposes to be effected; and the event of such comming armed to parlements proved very miserable to the parties, and both to prince and people generally. The lawe dislikes such courses: and it is against the nature of a parlement (which is a civill constitution) to be awed one way or other by armes. We find a law as antient as Edward the confessor's time, ordeining, that to those who come to synodes or assemblies, either summoned, or for buisnes of themselves, there shall be highest peace^h.

A statute of E. 1. recites, that between the king and certaine great men it was accorded, that in the next parlement provision should be made, by common consent of the earles, praelates and

^f Math. Paris, p. 96, 97.—Daniel, p. 85.—Par. 324, 325.—Dan. p. 151, 152.—An^o 1250 et 1264. ^g Walsingh. p. 90, 91.—Walsingh.—Fabian.—Stow.

^h Leg. Edouardi reg. Sax.—Sit summa pax.

barons, that in all parlements, treaties and other assemblies, every man shall come without all force and armour, peaceably¹. Now the praelats, earles and barons, and the commonaltie say, that it belongs to the king to defend all force against the peace, and to punish the offenders. The king commaunds this to be read in the exchequer, and inrolled.

In E. 2. time it was ordeined, that all should come to the parlement without armes. In his son's time there is a provision made against armes to disturbe the parlement. It was frequent in his time to make proclamations not to come armed to the parlement, forbidding armes in comming to the parlement; and this was commonly done att the beginning of every parlement, as appeares plentifully in the rolles therof^k. So carefull were they, that men should come in peace, and freedome, to the parlement.

That meeting, uppon the summons of the Levite, was to consulte: and yett they came armed, 400000 footmen that drew sword^l.

The greeke councells were sometimes disturbed by the comming of armed men among them; as that letter of Oforius testifies, praying the emperor to cease his violence, and not to send commanders among them.

The roman stories afford examples of the disturbances given to the senate, by comming of some great ones armed among them: and in

¹ 7 E. 1. Stat. att large.

^k 3 E. 2. rot. parl. p^t 1. m. 22.—6 E. 3. rot. parl. n. 2. et p^t 2. n. 1.—13 et 14 E. 3. et 26 E. 3. rot. parl. n. 58. et rot. 2. n. 5.

L. D. Scip. f. 26.—17 E. 3. rot. parl. n. 1.—15 E. 3. n. 2.—18 E. 3. n. 2.—20 E.

3. n. 1.—Stat. 7 E. 3. de Defen. portand. arma, etc.

^l Jud. xx. 2.—Jud.

xix. 30.

most countries and states it hath bin so uppon factions and civill discords among them, alwayes ending in miserable distractions and confusions both towards the armed and unarmed. Butt we neede not looke abroad, nor farre of, for examples of the licentious rage of comming armed to our parlements; the insolency wherof is so great, and so distasteful to their fellow-members and to all Englishmen, that we may hope the like arrogancy will never againe be dared to be practised. Members ought to come, to publique councells, armed with patience, and a good conscience; and resolved to act for God, for their prince and countrey.

C H A P. LXXII

Att the said day and place

NOT only the knights, cittizens and burgesſies, butt likewise the king, and all the lords doe come att the ſaid day and place, making up a full parlement. King, lords, and commons, att the ſaid day and place, meeting together in parlement; which make the three eſtates of the kingdome, aſſembled in parlement. To which methode of the three eſtates, I ſhall take the liberty, eſpecially as this writ is, to apply my following notes on **this** ſubject.

A mixture of all ſorts and eſtates of men, in the publique counsell and governement of a nation, is approved by many authors; and much more, by experience.

That there is a threefold representation and appearance of ſenators will be agreed: butt the question will be alſo made, how theſe three eſtates ſhall be accounted. Some ſay, that the king is the firſt eſtate; the lords all of them, both ſpirituell and temporall, the ſecond eſtate; and the knights, cittizens and burgesſies of the houſe of commons, they reckon the third eſtate: and, that it hath bin ſo taken in former times. Lambard followes this diviſion, and ſayes, that the parlement is mixed, both eccleſiaſticall and temporall; as having the biſhops in reſpect of their baronies, and not of their churches,

churches, joyned with the lay lords^a to make up the second estate; the first estate consisting of the prince alone and the third of the commonalty: which distinction may be the rather followed, the bishops being att present not of the lords house. Butt a great objection is made, against the exclusion of the bishops from the lords house in parlement; that they, as the lords spirituall, are one of the three estates in parlement: 1. lords spirituall; 2. lords temporall; 3. commons. And that the king is the head of all; which is true: butt that the king should be excluded from being the first estate; and the bishops, in his place, be accounted the first of the three estates, distinct from the lords temporall; is no smalle doubt. Those who deny it, have much, of the ground of their judgement, from those passages collected by learned Selden; who declares his opinion, that 4 W. 1. he made the bishoprickes and abbies subject unto knights service in chiefe, by creation of new tenures: and so first turned their possessions into baronies, and therby made them barons of the kingdome by tenure^b. This he justifies out of Mathew Paris, and Roger of Wendover. That in the year 1070, king William using the worst counsell, "all the bishoprickes and abbeyes, which held barronies (in pure and perpetuall almes) and from thence had freedame from secular service, he brought under knights service," etc.^c. inrolled them, how many soldiers every of them should find in time of warre. And he observes that W. 1. held a parlement the same yeare: so that perhaps this innovation of their tenures was done by an act of that parlement. He mentions, in his manuscript copy of Mathew Paris, in the margine over the year

^a Lamb. Jurisdiction of courts. f. 233.

^b Seld. 2 Tit. hon. p. 699.

^c MS. Episcopatus quoque et abbathias omnes quae baronias tenebant in pura et perpetua eleemosina, et eatenus ab omni servitute seculari libertatem habuerant, sub servitute statuit militari, etc.

1070, these words noted: "This year the service of barony was imposed on Ramfey^d." It seemes the volume belonged to the abbey of Ramfey. In the parlement 51 H. 3. att St. Edmonds-bury, this request of the king (the first of them that were then made in the house) is observable to this purpose, with the answear to it. It was demaunded, "that all clerkes, holding baronies," etc. should come in person armed; or should find so much for the expedition. The answear is, they were not to fight with the materiall, butt with the spirituall sword; with prayers and teares, and to main-tein peace, not warre; "and that their baronies were establisshed from pure almes^e:" wheruppon is supposed, that the baronies of the clergy were made of such lands as had bin antiently held only in frankalmoigne. And as then the bishops and abbots, so some others also of that kind of dignity, and by such tenures, afterwards became barons likewise. And the word barones comprehended those bishops and abbots, as well as the temporall barons: though for distinction of their qualities, sometimes praelatus and baro be so used, that the first being an ecclesiasticall title denotes the spirituall barons; and the last being originally temporall, denotes only the temporall barons.

In the same parlement 4 W. 1. by the counsell of his barons (saith Houeden) he caused to be summoned, etc^f. and though barons only are named, yett it appears there were bishops in that parlement; for the archbishop of Yorke, and the bishop of London are there named. And so much is shewed in the lawes of H. 1. "the lawe of king Edward I restore unto you, with those amende-

^d Hoc anno servitium baroniae imponitur Ramesiae. ^e Mat. Paris, p. 1340. Ut omnes clerici tenentes baronias, etc.—Et quod baroniae eorum ab eleemosinis puris stabiliuntur. ^f In H. 2. p. 343. ed. Lond. Glanv. MS. Not. ad Eadmer. p. 371.

ments wherwith my father amended them, by the counsell of his barons." And that there were the bishops in this parlement, (besides the generall custome,) they are named, in those lawes, in the king's charter to the citty of London^g.

Odo bishop of Bayeux had, by that name, no place in parlement; butt, as he was earle of Kent, and was posselt of 280 mannors^h. And the bishop of Constance, by the title of his bishopricke, was no part of the parlement; butt only by reason of the temporall baronie which he posselt in England.

In 10 H. 2. the parlement of Clarendon was held; where among the antient customs there recognized, this was one: the archbishops, bishops and all persons, who hold of the king in capite, are to have their possessions of the king, as a barony, and therof to answer to the justices and ministers of the king, and to prosecute, and do all regall customes; and, as the rest of the barons, are to be present att the judgements of the king's court with the barons, untill it come to diminution of members, or to deathⁱ. So that to hold of the king in capite, to have possessions as a barony, and to be a baron, and to have right to sitt in councells or courts with the rest of the barons, in that time were synonimies: and the meaning therof is, that all bishops, abbots, priors, and the like, that held their possessions as baronies, were accordingly to doe all services; and to sitt in judgements with the rest of the barons in all cases, saving cases of bloud.

^g Math. Paris, p. 75. edit. Lond. *Lagam regis Edwardi vobis reddo, cum illis emendationibus quibus pater meus emendavit, consilio baronum suorum.* Leg. H. 1.

^h Ordericus hist. eccles. lib. iv. p. 523.

ⁱ Fitz Stephens MS. Vita Tho. arch. Cant. — Golstadius Constit. imperial. tom. iii. p. 347. — Gervasius Doroborniensis MS. p. 68. Bal. cent. 3. script. 48. — Math. Paris. — Rog. Wendover.

In 11 H. 2. was the parlement of Northampton, wherein were the matters against the archbishop Becket; and when they came to give judgement against him, there was a difference between the bishops and barons, who should give it: the barons said, You bishops ought to pronounce the sentence; it belongs not to us; we are lay persons; you are ecclesiasticall persons, as he is; his fellow-priests, his fellow-bishops. To this some of the bishops answered: Nay this is rather your duty than ours; for this is not an ecclesiasticall, butt a secular judgement. "We doe not sitt heere as bishops, butt as barons; we are barons, and ye are barons: we are heere peeres^k." If so, then certainly, by their own acknowledgement and clayme of right, they sate in parlement not as bishops; not as a distinct estate, butt as barons and peeres of parlement.

So in 5 John, the parlement att Winchester is stiled the common councell of our barons; and yett doubtles the bishops were there^l.

Sir Henry Spelman is of the same judgement: speaking of baronies by tenure, he instanceth in bishops, who (saith he) have their baronies by the only investiture of their lands; and he cites Stanford, that bishops have no place in parlement butt in respect of their possessions; to witt, they have baronies annexed to their dignities. And of eleemosinary barons he names archbishops, bishops, abbots and priors, who hold the lands of their church of the king, by barony: and he cites an antient stiling of bishops by the name of

^k Roger Houeden an^o 1163.—Gervasius Doroborniensis.—Quadrilogus.—Stephanides de vita et passione Th. Cant. — Non sedemus hic episcopi sed barones. Nos barones et vos barones. Pares hic sumus. ^l Math. Paris. 5 Jo. rot. pat. m. 1. n. 3.

barons, in Burgundy, before the year of our Lord 580; where it is said, "the barons of Burgundy, as well bishops as other vassalls^m."

The collection uppon this matter is plainly thus: that if the bishops have place in parlement as barons only, and as the rest of the barons and peeres in the lords house; they are part of that body of the barons, and therefore cannot be a distinct estate from them; no more than knights of shires are a distinct estate from the cittyzens and burgeses in the house of commons, which no man will affirme. And there seemeth as little difference between spirituall lords, and temporall lords; as between knights commoners, and cittyzens and burgeses commoners.

If the bishops were in parlement otherwise than as barons, no act could be made without their assent as a distinct estate; not over-ruled by the majority of votes of the lords house (as every one knowes they were); butt only they should have debated by themselves, and bin over-ruled by the major part of themselves only: whereas none will deny butt that their debates, as well as their sitting, was with the rest of the barons; and over-ruled by the majority of the votes of all the barons, both spirituall and temporall lords together. As more observable it was uppon the making of the statute of conformity 1 E. 6. and of the oath of supremacy 1 El. when all the bishops dissented from those acts; yett the major vote of the rest of the barons carried it: and if these be good lawes (which will not be disputed) they, with many others, are so many arguments, that the spirituall lords are not a distinct body and estate by themselves in parlement; butt, a part only of the house of peeres. In the

^m Spelman. glossar. p. 82. verbo Baron.—Stanf. lib. iii. c. 62.—Appendix ad Gregor. Turon. c. 41. Burgundiae barones tam episcopi quam caeteri leudes.

rolle of summons 49 H. 3. besides bishops and deanes; there are 65 abbots, 36 priors, and the master of the Temple, summoned to parlement; and some hold, that they were all the abbots and priors of England. In succeeding parlements fewer of the regular barons were summoned, sometimes a greater and sometimes a lesser number; and some gott exemptions from appearing, as the abbot of Leycester, and the abbot of St. James of Northamptonⁿ.

In 6 E. 3. there came of the clergy only the archbishop of Yorke, and two other bishops: those of the province of Canterbury absented themselves, bicause of the debate between the two archbishops, about the supream bearing of the crosse^o.

Walsingham relates, that king Edward the third held his parlement att Winchester, “to which were summoned to come, of the clergy, 4 bishops and 4 abbots only^p.”

Uppon the dissolution of abbeyes by H. 8. all the abbots, and priors, bicause excluded from the lords house^q.

In the parlement 16 Car. 1. the act was made, that no archbishop, bishop, or other person that is or shall be in holy orders, shall have any seate, place, suffrage or vote, or use any power in the parlements of England.

It is a knowne proceeding: that in case of bloud, the bishops all, forbear to sitt; and yett the judgements given without them are not void, wherof there are very many precedents. And Keilway

ⁿ 25 E. 3.

^o 6 E. 3. rot. parl. n. 8.

^p 46 E. 3.—Walf. f. 186.

Ad quod de clero moniti sunt venire quatuor episcopi, et quatuor abbates tantum.

^q 31 H. 8.

goes so farre in his reports, that he affirmes "the justices said, that our lord the king may well enough hold his parlement by himselfe, and his temporall lords, and by his commons; altogether without the spirituall lords: for the spirituall lords (saith he) have not any place in the parlement chamber by reason of their spiritualtie; butt only, by reason of their temporall possessions".

If then the lords spirituall doe sitt in parlement as barons only; if their votes are involved, and over-ruled by the majority of votes of all the house of lords; if severall judgements and acts of parlement to which they consented not, nor any of them, be nevertheles good and valid; if the king may hold his parlement sometimes with a greater, sometimes with a lesser number of them, as he please, or without any at all of them: these are no weake arguments, that the spirituall lords are not a distinct body by themselves; are not one of the three estates of our english parlement. And my method may be the better justified (especially as the present writ is), that the three estates of the parlement of England doe consist of the king, lords, and commons, in parlement assembled.

Coke affirmes in severall places, that the parlement consisteth of the king, the lords of parlement, and the commons. The lords, he saith, are divided into two sortes, spirituall and temporall; and the commons into knights, cittizens and burgessees. That some of the members of this court are by discent, as antient noblemen; some by creation, as lords newly created; some by succession, as bishops; and some by election, as knights, cittizens and burgessees. That all of

* 7 H. 8.—Keilway rep. f. 184. b. Les justices disoient que nostre seigneur le roy poit affets bien tenir son parlement per luy, et ses temporall seigneurs, et per ses commons; tout sans les spirituall seigneurs.

* Co. 1 Instit. §. 164. p. 109, 110.—

4. Instit. c. 1. Co.

them, by force of the king's writ, are to be summoned; and they ought to be present att the day, and place, appointed by the king for their meeting.

Sir Thomas Smith, in his commonwealth of England, saith, that they are all present att the parlement, to shew what is good and necessary for the commonwealth; and to advertise, and consult thereupon^t.

In Martyn, Polydore Virgill, Minshew, and Coke differing from what he saith in other places, and in some of our records, the three estates are reckoned, 1. lords spirituall: 2. lords temporall; 3. commons. And in other places it is said, 1. the king; 2. the lords spirituall and temporall; and, 3. the commons; make the three estates^u. Cambden seemes of this judgement, where he saith: to "speake more significantly, after the lawyer's phrase, the king, the lords spirituall and temporall, and the commons; which estates represent the body of all England^w." And in the Titles of honor is mention of severall parlements, both before and in the time of duke William, wherin were the king, the lords spirituall and temporall, and many of the people or commons of the land^x.

Lambart still accounts the king the first estate; the lords spirituall and temporall, the second; and the commons, the third estate^y. Butt I suppose, by the opinions and arguments before noted in this chapter, there may be a satisfaction, that the lords spirituall cannot be a distinct estate by themselves: and all authorities doe agree

^t P. 36, 37.

^u Hist. f. 21, f. 477.—4 Instit. Co. c. iv.—8 E. 3. rot. parl.

^w Camb. Brit. p. 177.

^x 2 Tit. hon. Seld. f. 705, 706, 707.

^y Ju-

risdiction of courts, f. 233.

the constitution of our parlements to be of king, lords and commons; which suits best with my methode, and the present writ. Nor is it necessary to inquire much into this point, which is, and should be so well understood by Englishmen. Butt it may rather be subject to the censure of the lord Ellesmere; who admonisheth us, that to speake of the constitution or forme of the parlement, or how, or when it was first begunne, is for buisy questionists^z. Perhappes indeed it might not suit with that case, or the then councells wherein his lordship had a great share; or probably his leisure might not permit his looking into that kind of learning: wherby one might be the more apt to injoyne others from it. Butt I shall forbear reflections: only hope, that it will not be accounted a crime, for an Englishman, to inquire into and seeke to knowe the constitution of that supream court, and councell, unto which his life, liberty, fortune, and his all are subject; and in whose acts his own consent is involved. It sufficeth for my purpose, the parlement consists of king, lords and commons, which (att this time especially) I call the three estates: and, out of the Mirroir of justices, Coke observes the threefold end of this councell of the three estates;

1. that the people may be kept from offending;
2. that men might live safely, and in quiet;
3. that all men might receive justice^a.

And he giveth his judgement of the three great parts of it: "if you consider the continuance of it, it is most antient; if the dignity of it, it is most honorable; if the jurisdiction, it is most

^z Case of the post-nati.

^a Coke epist. 9. rep.

capacious^b." Heere is a temperament pertaking of the good of monarchy, of aristocracy, and of democracy ; and flying the evils of any one of them stretched too farre by an unlimited hand. These three governments are comprehended in this short and full expression by Tacitus : " Either the people, or the chiefe men, or single persons doe governe all nations and citties^c. Wherfore Seneca, a little larger, saith : sometimes it is the people whom we are to feare ; sometimes, if such be the government of the citty, that many things are transacted by the senate, there, the persons who are gracious are to be feared ; sometimes single persons, to whom the power of the people, and over them is given^d. When these three severall estates are mixed together, with a certaine kind of temperament wherein neither the people doe serve under a domineering slavery, nor insulte by a licentious liberty ; this is helde the best forme of a commonwealth. Bodine judgeth it the most prudent way of governing, that there be one prince or chiefe in dignity, to unite all and every one as members of a body fitted and knit together among themselves ; and who may rule the publique councill as with a soveraigne power^e."

The author of the reason of state of the german empire, comes to this simile. As out of instruments of severall sounds sett to a due proportion, by the bases means and trebles joyned together, a sweet sound and pleasing melody doth arise : so from the society in a commonwealth, of those who obey and those who commaund, of rich and poore, of artificers and sedentary persons, and of divers other sorts and degrees of men, a most pleasant consent and con-

^b Si vetustatem spectes, est antiquissima ; si dignitatem, est honoratissima ; si jurisdictionem, est capacissima.

^c Lib. ii. Annal. Cunctas nationes et urbes, aut populus, aut primores, aut singuli regunt.

^d Seneca, epist. 14.

^e De repub. lib. ult. cap. 4.

cord doth arise^f. Butt it must be understood (saith he) that this harmony, collected out of things different in nature, must be by a certaine symetrie or due proportion of subordination; and must be tempered in a certainty, both of ruling and subjection. And the supream power in the commonwealth, as the soul in a humane body, or as nature in the world, doth so order and dispose of those contrary qualities, by an agreeable temperament; that they worke together to a most sweet harmony: and that (saith our author) may be esteemed the best constitution and frame of government, which is neither absolutely monarchicall, nor absolutely aristocraticall, nor absolutely democraticall; butt an excellent well-tempered mixture of these three parts into one, to a perfect harmony of government. Alluding heerunto is that passage of another author, cited in the *Jani Anglorum*: that as in the instruments of musicke, and in singing itselſe, there is a certaine consent or harmony out of distinct sounds which, being unordered and in discrepancy, the skilfull ears cannot endure; and that consent, by the moderation of differing voices, is neverthelesse made up into a concorde; so of the highest, the middle and the lowest degrees, putt together by moderated reason, a citty rejoyceth by the consent of unlike things. And that which by musicke is called harmony, in song, is, in a citty, concorde; the strongest, and fullest band of safety in all commonwealths^g.

Grotius hath the like passage, where he saith. "It is most true, that every commonwealth is established by a certaine consent, and harmony; and, is ruined when that is dissolved: butt (saith he) that consent and harmony I doe interpret to be not of instruments of musicke, and of sounds; butt a well-tempered concord and agreement of the prince with the people, and of the people with the prince,

^f Lib. de ratione stat. imper. German. p. 30.

^g Seld. *Jani Anglor.* f. 125.

and of the estates among themselves." Then he notes that, by this concorde and consent, both the princes of Holland and the nobles and people "did long flourish:" whilest all did reverence the prince; the prince himselfe, the lawes and publique assemblies; whilest to the nobility their honor, and to the people their liberty was continued^h.

In the government of England, (wherby I meane not the executive part of government, which is in the king and his subordinate officers,) butt in the supream, legislative and judicial power in government, there are these distinct parts, different qualities, founds and voyces; which yett being moderated, tempered and mixed together, doe make a pleasing harmony and concorde of government. Att the said day, and place, there are the highest, the middle, and the lower degrees mett together; and in a fymmetry, and due proportion, sett together; and so tempered and guided by reason and wisdome, that a sweet concorde may therby arise, and the commonwealth rejoyce and flourish in the harmony therof. Wherby justice, the foundation of every commonwealth, may be indifferently administred; when none are permitted to be too high, or too great for it; one estate watchfull over another to see their foundation justice, undisturbed, and not perverted; making it a generall case, if justice be denyed to one; and an injury to one, contrary to lawe, is taken as done to all: and therby the peace, safety, and right of the whole body of the commonwealth is indeavoured, by all the parts of it, to be promoted and preserved; and that by a mutuall and vigorous co-operation of each ranke, and of all sorts in their distinct spheares. Who esteeme themselves equally concerned

^h De antiquit. reipub. Batavicae, f. 42, 43.—Quem ego concentum non fidium ac sonorum, sed vero principis cum populo, populi cum principe, atque ordinum inter se bene temperatam concordiam interpretor.—Diu florere.

with any others, when they are equally admitted into a capacity, and share of interest, in the publique councells and tranfactions of government: wherby the good or evill redounding to the publique hath a more perticular reflection uppon the persons, and those degrees whom they represent, who are the more concerned by the acting of their deputies; and more satisfyed with their determinations, than with others whom they the more dislike and envy, because imposed on them, than such as they chuse themselves, which usually begetts more contentment and readier obedience in the choosers.

That constitution is most properly stiled a commonwealth, where all sorts and degrees of persons doe injoy their common rights; where the king injoyes his right, the lords their right, and the commons their right; where all are sharers in the common good, no man's perticular being excluded, butt all admitted to act in the common affayres either in person, or by representation. Nor is it dissonant from the rules of nature and reason, that where every one is concerned alike, and to be alike bound by the decrees and judgments of publique councells; that there all should be parties therunto, either by themselves, or by their representatives: as it is in our parlements and in all councells, wherof the three estates are the frame and constitution. Some make a division into "three estates in each severall kingdome"; as the king, the people of the higher ranke and the praelats and nobility, and those of the lower ranke the commons and inferiour clergy: this number of three being uppon a ground, of policy, that there might not be an even suffrage which would hinder the effecting of buisnes; butt a third estate was necessary, that uppon difference of judgement, joyning them-

¹ Tres ordines in singulis regnis.

selves to either of the other two, they might be reconciled into one opinion, or over-ruled to the promoting of the common good^k. And in case there should be more than three estates, the multitude of opinions^l, and the severall interests, would keepe them att a distance, and hinder their conclusions.

This mixture of three estates, in supreamc councells, we find amongst the Hebrewes, and most other nations in imitation of them, as well as our's. That text is noted for this purpose, where the daughters of Zelophehad came and stood before Moses, and before Eleazar the priest, and before the princes, and all the congregation^m. In this publique councill was Moses their prince, or king; Eleazar and the princes, the lords spirituall, and temporall; and all the congregation, or the deputies of all the people and commons of Israel. Unto them thus assembled as a publique councill, and court of justice, came the daughters of Zelophehad; acquainted the court with their cause; and demaunded right and justice of them, which they received.

When God spake unto Moses in Mount Sinai, and commaunded him to say unto all the children of Israel; that if they would obey the Lord, then they should be unto him a peculiar treasure above all people. Moses came, and called for the elders of the people, and proposed to them, (saith the elder translation,) all these things which the Lord commaunded him: and the people answered all together, and said; All that the Lord hath spoken, that will we doeⁿ. In this publique assembly is noted Moses their king; the elders, which were their greatest lords: and the answear

^k Bodin de repub. lib. iii. c. ult. Ut alterutri sese adjungentes utrumque conciliet.

^l Opinionum multitudo.

^m Num. xxvii. 2.

ⁿ Exod. xix. 7, 8.

was given by all the people together; which could not be otherwise than by their deputies.

When Benhadad, king of Syria, with his thirty kings and his great host, besieged Samaria, and sent his proud message to king Ahab; he called all the elders of the land and related the matter to them: and all the elders, and all the people, sayd unto Ahab; "Hearken not unto him, nor consent^o." In this publique councill is noted Ahab the king; the elders, the lords; and all the people, who could not answear butt by their deputies, without one of Abulenfis his miracles.

The fullest text seemeth to be that where king Hezekiah sent his letters abroad, to all Israel and Judah, about the keeping of the passeover, a buisnes of very great weight and high consequence; and therefore the king thought fitt by his writs to summon a publique councill, to advise with them about it, as the words are: "for the king had taken councill, and his princes, and all the congregation in Jerusale^m." The Hebrew renders it; "that the king held a councill with his princes, and with the whole assembly of the people, in Jerusale^m." Arias Montanus gives the same version: and the vulgar translation renders it; "that a councill was held of the king, of the princes, and of the whole congregation." The Syriacke hath it; "that the king held a councill with all his great men, and with the whole assembly which was att Jerusale^m." The Greeke is; "and the king tooke councill, and the chiefe men or rulers, and all the church or assembly in Jerusale^m."

^o 1 Kings, xx. 7, 8.

^p ויועץ המלך ושריו וכל הקהל בירושלם 2 Chron. xxx. 2. — Inito concilio regis et principum et universi coetus.

^q Καὶ ἐβλεύσατο ὁ βασιλεὺς, καὶ οἱ ἀρχόντες, καὶ πᾶσα ἡ ἐκκλησία ἐν Ἱερουσαλὴμ.

The hebrew word “jagnatz” signifies to take advice or counsell, or he consulted ; and the word vesarick from the word fir and far which signifies a prince, and one that ruled and exercised dominion^r, such as the lords, great men and officers doe ; and with these were the congregation, the ecclesia, the assembly, the representatives of all the people or commons ; and, all together. The latine renders them what we english “a meeting, a company, a congregation, an assembly of cittizens^s.” The word ecclesia was used by the Lacedemonians, and Athenians, for their publique counsell, wherein the people had their deputies ; and the Romans had their comitia calata, from the same word ; and in these counsell were others, of the commonaltie, besides the princes and great men. Here was king Hezekiah ; with his princes, his great men or rulers ; and the congregation, the assembly of the deputies of the people ; the king, lords, and commons of Israel, in publique counsell together.

Of these counsell, and generall assemblies of the people, Menochius discourseth att large. And Bertram, speaking of the government of the Hebrewes in Ægypt, saith, that it was mixt of aristocracy and democracy ; and that the agmen or congregation of Israel was tempered like that of the Lacedemonians : so that Moses had the kingly power ; the 70 elders, the aristocraticall power ; and the cittizens, who made the kahal or agmen, the generall assembly, had the democraticall power. He further saith of the kingly power restored ; “that the government seemed to be so kingly, that yett it was alwayes esteemed as mixt with both the other governments^s.”

וְשָׂרֵי יִשְׂרָאֵל יֵעָצִי

tus civium, etc.

^r Coetus, concio, congregatio, concilium, conventus civium, etc. ^s Lib. i. c. 7. De repub. Judaic. lib. 5. et c. 6. p. 76.—

קָהָל—Bertram, c. xi. p. 149. Politia ita regia fuisse videtur, ut semper mixta censenda sit ex utraque alia politia.

From the Hebrewes, the Graecians learned their politie ; and from them, the Romans, (as hath bin noted). And in the story of the Maccabees is somewhat touching the three estates, both in the jewish, and graecian counsell.

The ambaffadors, sent from Jonathan to Rome, entred into the senate, and said : “ Jonathan the high priest, and the people of the Jewes sent us unto you, etc. to renew a league.” And the letters to the Lacedemonians were : “ that Jonathan and the elders of the nation, and the priests, and the other people of the Jewes, unto the Lacedemonians their brethren send greeting, etc .” Uppon this, Bertram notes ; “ that heere was first Jonathan as prince, then the senate, and lastly the people .” Plainly heere was Jonathan, the prince and high priest, who had then the kingly power ; and, the elders and priests, the lords spirituall and temporall ; and, the other people, the commons, by publique counsell sending forth ambaffadors.

After this Jonathan called “ the elders of the people” together, and consulted with them about the building of strong holdes in Judaea : which Iosephus renders, “ All the people.” To Simon the priest king Demetrius writes in this stile : “ King Demetrius unto Symon the high priest, and friend of kings ; as also unto the elders, and nation, of the Jewes, sendeth greeting *.” Heere was king, lords and commons of the Jewes, to whome this letter was directed. And like unto it is that of the Lacedemonians to the Jewes. “ The rulers of the Lacedemonians, with the citty ; unto Simon the high priest, and the elders and priests, and residue of the people of the

^u 1 Mac. xii. 3.—1 Mac. xii. 6. Καὶ ἡ γεγεσία τῶ ἔθνους, καὶ οἱ ἱερεῖς, καὶ ὁ λοιπὸς δῆμος τῶν Ἰουδαίων, etc.

^w P. 194. Jonathan tanquam princeps, deinde senatus,

postremo populus ipse.

^x 1 Maccab. xii. 35. Τὰς πρεσβυτέρους τῶ λαῷ—Λαὸν ἁπαντα.—1 Maccab. xiii. 7, 8.

Jewes our brethren, send greeting^y." Some doe note the fullest instance uppon this subject to be of that famous councell, and assembly att Saramel, which is stiled "the great synagogue of the priests, people, and rulers of the nation, and elders of the countrey^z:" which termes have bin before expounded, and doe cleerly manifest in this assembly the high priest, the prince or king; the priests and rulers, the lords spirituall and temporall; and the people, or deputies of the commons, all in councell together.

It appears by the place formerly cited out of the Maccabees, that their supream senate consisted of the king; "the archontes," rulers, great men or lords; and "the cittizens," or commons^a. In like manner, the Athenians had their king; the prytanes, or lords; and the commons of the city, or their deputies, in publique and supream senates. From the Graecians the Romans tooke the patterne of their politie, and frame of government: wherof it is said; that Solon praescribed such lawes unto the cittie, that foreiners did not disdaine to use them. "So that the Romans themselves, when they desired to frame their commonwealth, sent ambassadors to Athens, to request the laws of Solon^b:" acknowledging therby, that they had a greater esteeme of Solon's lawes, than of any other.

Romulus elected the first 100 senators of Rome out of the patricians, and called them patres; their sons were stiled patricians; and in proces of time the commons were eligible to be senators. Some write, that Tarquinius Priscus added the second hundred

^y 1 Maccab. xiv. 20.

^z 1 Maccab. xiv. 28. Ἐπὶ συναγωγῆς μεγάλης

ἱερέων, καὶ λαῶ, καὶ ἀρχόντων ἔθνους, καὶ τῶν πρεσβυτέρων τῆς χώρας.

^a Ἀρχοντες,

ἡ πόλις.

^b Gothofredus, lib. ii. p. 698. Adeo ut ipsi quoque Romani, cum rempublicam suam formare vellent, legatos Athenas miserint, qui leges Solonis inde peterent.

to the Roman senate, out of the plebeians or commons; who were therefore called "senators of the lower ranke^c." So heere was in the Roman senate, in the elder times, 1. their king; 2. the patres, or lords; 3. the commons of the lower ranke, or house, joyned with them. Godwyn saith in his next chapter, that "the Romans were divided into 3 estates; the senatorian strictly so called, the equestrian, and the popular or commons estate;" the lords, the knights, the citizens^d.

Grotius also remembers that, amongst the Achaeans, the councell was thus established with commons, or deputies of citties. "Hippodamus instituted the like three estates, of artificers, husbandmen, soldiers or gentlemen," all members of the senate: so were those which Plato instituted, "of officers, soldiers, and husbandmen." And the Ægyptians had in their senates "priests, noblemen or soldiers; and, handy crafts men;" which, with their king, made up plainly king, lords spirituall and temporall, and the commons^e.

To the three estates in France one of their authors resembleth some of the antient senates, where he saith; "like unto this was that of Panionium, and Panætolum, and with the Græcians the Amphyc-tiones:" which is also noted by Sir Walter Raleigh^f.

In Spayne were antiently found the like foot steppes of king, lords, and commons, in their publique councells; perticularly in

^c Mart. Phileticus in Cicer. l. 1. Godwyn antiquit. Rom. l. 1. §. 2. p. 28. Senatores minorum gentium.

^d De secunda divisione Romanorum in tres ordines; senatorium, equestrem, popularem seu plebeium.

^e De antiquit. Reip. Batt. f. 2. 3. Ex Legatis Urbium. Tales Hippodamus ordines tres faciebat, artifices, agricolas, milites.—Custodes, milites, agricolas.—Sacerdotes, milites, opifices.

^f Lupanus l. 2. f. 454. Huic conventui simile fuit Panionium, et Panætolum; et Græcis Amphictionum confessus.—L. 4. f. 162.—Lib. de rep. Hispan. f. 122. de Comit. Arrag.

Arragon,

Arragon: which they account in this manner, as one of their authors informes us. "The publique councill (saith he), of Arragon, did consist of three estates only; of nobles, of knights, and of citizens or commons; in the year 1300, was added a fourth, of the ecclesiastickes: these 4 estates they commonly call, the 4 armes of the kingdome^s." Heere was the king, the head of the councill; the lords, consisting of ecclesiastickes and temporall persons; and the commons, consisting of knights and cittizens: and all being together, (how many estates soever they reckon besides the king;) heere was plainly, according to my methode, the king, lords spirituall and temporall, and commons, in their publique councill.

Like unto this is noted, by Alvarez de Valasco, of Portugall, who speaking att large des Cortes, of the courts, as he termes them; he accounts the three estates besides the king, to be of ecclesiastickes, of nobles, and of commons^h: so there was the king, the lords spirituall and temporall, and the commons, in their publique councill.

Gothofred describes the parlement of Sicily (using the word parlement) to be in this manner. "It consisteth (saith he) of three estates of men, which the Sicilians doe call the three armes: the first estate is of ecclesiastickes, as well of the upper as lower sort of them, and these together are called the ecclesiastical arme." Our author then proceedes to that which he calles "the second estate, which, he saith, consisteth of the illustrious and noble persons, who are called the military arme:" he concludes with that which he

^s Comitia Arragonum tribus tantum ordinibus constabant, nobilium, equestrium, et civicorum, five municipalium. Anno 1300 quartus ecclesiasticus accessit. Hos quatuor ordines vulgo, los quatro brachos del regno.

^h Alvarez de Valasco. Decis. lusitan. consult. 100. Tres status ecclesiasticorum, nobilium, plebeiorum,

reckons, the third estate; which "he saith, consisteth of those who are sent by the provinces, and citties, as their deputies; and they are named the arme of government¹."

In this constitution is a strange resemblance of our parlements. Heer is first the king, or his vice roy; then the lords distinguished into two sorts, of spirituall, and temporall persons. Of the spirituall persons some are of the greater or higher ranke, as bishops and abbots; some are of the lesser ranke^k, as proctors of the clergy, which were antiently in our parlements, and are still in the convocation house: the lords temporall amongst them are said to be the illustrious and noble persons of the kingdome, the military arme, as our barons are. And the commons, in the sicilian parlement, are divided into deputies sent from the severall provinces, like our knights of the shire; and, from the townes, like our cittizens and burgessees. In the whole body, the king, the lords spirituall and temporall, and the commons, were in their publique councells. The last wherof, that I meet with, was in the year 1581. when the clergy, nobility, and deputies of provinces and townes, were assembled att Tomara in Portugall, to acknowledge Philip 2. for their king: and to settle the government of that kingdome¹.

Bodin writes that in Spayne the meeting of the three estates, was called curia, the court, consisting of the clergy, the nobility, and

¹ Gothofredus l. 3. p. 657. Constat e triplici hominum ordine, quos Siculi tria brachia vocant. Primus ordo est ecclesiasticorum, tam majorum quam minorum gentium, et hi junctim appellantur brachium ecclesiasticum. Secundus constat ex illustribus nobilibusque, qui vocantur brachium militare. Tertius est eorum qui ab provinciis urbibusque, procuratorio nomine mittuntur; nominantur brachium dominationis.

^k Majorum gentium, minorum gentium.

¹ Gothofred. l. 30,

the commissioners of the provinces and antient townes^m. The like is noted for Naples, by the generall history of Spayne: and, for Castile, it setts forth a parlement, of lords, prælats, and deputies of towns, summoned att Toledo in the year 1210. uppon the invasion of the Moores. Another att Bruges anno 1179, for rayfing of money. Att Toledo, Ferdinand the catholique held a great convention anno 1479, for swearing to the succession of his son Don John: in which the prælats, the nobility, and almost all the citties which sent commissioners, or deputies, to the assembly, are there named. There was also a meeting of the deputies of the three estates of Navarre, att Taffala, anno 1481, for preserving the obedience of the people to king Francis, a minorⁿ.

In Hungary, before they became christians, they had in their publique councells the king, "the nobles, and the commons:" and after the receiving of the gospell "the bishops," and others of the clergy, were added to them^o.

Pontanus reckons 5 estates in the publique councells of Denmarke: 1. the king; 2. the bishops; 3. the nobilitie; 4. the yeomanry; 5. the tradesmen^p. All doe result into our methode of king, lords, and commons, antiently among them.

I shall now come briefly to relate the story of the three estates, or the assembly of the estates in France; and the commencement, the continuance, and the abolition of those kinds of councells with them; as their own authors testify. Du Haillan, in the state of the affayres of France, certefyeth us: that in his countrey, parlements

^m De repub. l. 3.

ⁿ Gen. hist. Spayn. lib. 14.—Lib. 9.—Lib. 10.—Lib. 22.

^o Bonfinius hist. Hungar. l. 1. nobiles et plebei—episcopos et sacerdotum collegia.

^p Pont. in Daniæ descript. et histor. rer. Danicar. l. 7.

were first introduced by Pepin major of the pallace; and that they were called parlements, “wherin customarily did assist the princes and greatest lords of the realme, the most venerable men of the church, and the most honorable persons among the people¹.” Heere we find the king, (for so att last the Maire du Palais came to be,) with the lords spirituall and temporall, and the deputies of the commons in their publique counsell; and that as antient as the time of the Vizigots being in their land. In another place², this author speaking of the fashion of the first counsell of the kings of France, saith: that the majors of the pallace did first introduce them, after they were furnished with the power of kings, serving themselves of them, as with a masque; and invented these parlements to which every one was called to speake his advice, to captivate the hearts of the people; and by this means to gaine their good will, to render their own power the more tollerable. He concludes, as to the name parlement; that wheras the complaints and publique grievances were showed in the first parlements; and that, by the institution of the parlement of Paris made by king Philip le Bel, it had no cognizance butt of causes civill and criminall in the last resort without appeale: those grievances, complaints and publique remonstrances were remitted to an assembly which was then erected and “baptised with a new name, and called the three estates; and the name of parlement remained to the assembly of the soveraigne courts” of that kingdom for ordinary justice, and for the buisnes of the king³.

¹ Du Haillan f. 184.—Aux quels coustumierement assistoient les princes et plus grands seigneurs du royaume, les plus venerables gens de l'Eglise, et les plus honorables hommes entre le peuple. ² P. 178. et 179. ³ Du Haillan. f. 184,

185.—Baptisee d'un nouveau nom et appelee les trois Estats; et le nom de parlement demeura a l'assemblée des cours souveraines.

Pasquier informes us, that the Druydes in Gaule did yearly assemble in Diettes; and Grotius describes them as three estates, saying: that the antient Gaules, in their publique councells, had the Druides, the nobles, and the commons¹. Pasquier is pleased to expresse his fancy of the occasion of the three estates; and of the bringing in the menu people, those of the inferiour ranke, to be the third estate. He saith, it was to the end that kings might gett money from them, with the better contentment, and by their own consents. That the king sent his commaunds to all the provinces, that they should assemble in each stewardship, and bayliwicke; and that there the clergy, the nobility, and the inhabitants of the people who were called the third estate, should advise of applying remedies to the generall defaults of France; and all of them, as with one hand, to bring means requisite for supply of the necessities of the war: and that after conference among themselves, they should depute certain persons of each estate to consulte together, in the towne that should be appointed to hold the generall assembly. Theruppon (saith he) some good ordinances are made for generall reformation; "and these are fayre tapisseries, which serve only for parade unto posterity²." In the meane time (saith he) the impositions graunted to the king are carefully brought to effect: the ploughman, or countryman is added to this assembly, contrary (as this author is pleased to affirme though mistaken) to the antient order of France, for no other reason butt this; "that he uppon whom the loade and charge must chiefly fall, being ingaged by promise in that place, might not take occasion of flying backe or murmuring³." In the summe of this relation,

¹ Recherches de la France f. 81. Grot. de antiquit. rep. Bat. f. 2. 3. Druidas, equites, plebem Galli veteres, &c.

seulement de parade a une posterite.

² Ce sont belles tapisseries qui servent

³ Que celui sur le quel devoit tomber principalement le faix et charge, afin qu'estant en ce lieu engagé de promesse, il n'eust, puis occasion de retifver ou murmurer.

we find in this publique councell the king; the lords spirituall and temporall; and the deputies of the people, the commons, elected and sent by them to this assembly, att the day and place appointed, to advise, and consent, on their behalfe that sent them. Being mett together, the chancellor acquaints them with the cause of their being summoned; some good lawes are made; they give money to the king; and so returne home againe.

Lupanus saith, that their auncesters being to consulte about great and weighty matters of the commonwealth, antiently had that famous assembly of the three estates, of the nobles, of the priests, and of the people: then he mentions their power, and the affayres which cannot be dispatched butt by common consent of all the three estates; and that the king did write to the nobles, praelats, and cittizens, that by common consent they should elect certaine persons, &c.^x.

Honorius gives an high authority to the estates in his countrey, that if any power in France can impose uppon the kingly power, (which must be with his own consent,) "it is that assembly of all the three estates, which is the representative body of the whole kingdom; as is in England, and in Scotland, the generall parlement; and in Germany, the diette'." We need not to note heere the resemblance; the author doth it for us, and that by name to our parlement: and to the manner of their assembly, he saith; that "every province and citty, did depute certaine persons, which did represent

^x Lib. 2. f. 453. Celeberrimum trium ordinum conventum olim habebant, nobilium, sacerdotii, plebis.—Scribebat rex ad nobiles antistites, oppidanos communi consensu aliquos deligerent, &c.

^y Honor. de regno Galliæ, f. 537. Ea quidem est omnium trium statuum assemblea, qua totum regni corpus representatur; ut est in Anglia, et in Scotia, generale parliamentum; et in Germania, dieta.

the three estates of the kingdome, some the clergy, others the nobility, and others the people^z."

Thuanus makes a perticular description of the manner of sitting, and proceeding of this councell; and of the severall places of the king, the daulphin, and of all the estates^a. And of the like assemblies of the three estates in Languedoc, Brittain, and other parts of France, mention is made by their owne authors. Of those in Normandie, their customaire will be the best description^b: the glosse of it speakes in the language of that time; (as lyable to the scorne of our finer times, as that which some call our law french bicause some of our law bookes are written in it, and was the french spoken and written by the french men; and they who are ready to cavill, though they understand not what they cavill at, may with as much cause except against our old english histories, or other authors, bicause they write not in the idiom, with the like apish coyned words as some use in our time, wheras the old may be as significant;) and I shall presume to putt it in our own tounge.

"Also by the said paragraphe it may appeare, that the prince, the praelats, the earles, the barons, and the other wise men, called to the compiling of the said booke,"^c &c. are more obliged to keepe what is therin conteined; for they are not only obliged as others, butt perticularly and expreffely, as the glosse gives the reason: "for it was compiled by their agreement, councell, and expresse consent^d."

^z Quælibet provincia atque civitas certos deputabat homines qui tres regni ordines referrent, alii populum, &c. ^a L. 20. f. 557. ^b Grand coustumier

de Normandie, f. 1. 8. ^c Item par ce dit paragraphe peult apparoir que le prince, le praelats, le contes, et les barons et les autres sages appellees a la compilation du dit liure &c. ^d Car il fut compilé de leur volonté, conseil, et consentement expres.

Butt France, or rather some of her natives, boast of being delivered out of wardship: others say, they are brought into more, by the abolition of the assembly of the three estates there. We may know the occasion, and the doing of it from Honorius, who saith severely: that when the lust of their princes did beare rule, "this custome of assembling the estates was abolished;" that in the reigne of Lewis II. "he was held guilty of treason," that spake a word of restoring this assembly; and this king was wont to vaunt, that he was now "out of tutelage," and had no more need of any curators^e. From that time, the three estates were not assembled after the antient manner until the year 1483, under king Charles 8. who was then a minor; and after that, in the year 1561, under Francis 2. and never since.

The german diette is constituted also of three estates, the emperor; the princes ecclesiasticall and temporall, the lords of the empire both spirituall and temporall; and the deputies of the imperiall citties, the commons. And this is the antient frame of their publique councells, wherof Tacitus makes mention: that, "in smaller matters, the princes consulte; of greater matters, all consulte; butt yett so, that those things, whose determination belongs to the people, are handled by the princes also^f. After this, it is said; that they choose rulers of the people in publique councill. These rulers administer justice in countries, and townes: and "to every of these princes 100 chosen out of the people are associated, and have with them councill and authority^g."

^e De repub. Gall. f. 583. Hæc consuetudo congregandorum statuum abolita est.—Perduellionis reus.—Hors de page.

^f De morib. Germ. & descript. Germ. p. 636. 637. De minoribus rebus principes consultant, de majoribus omnes. Ita tamen, ut ea quoque, quorum penes plebem arbitrium est, apud principes pertractentur.

^g Principibus singulis centeni ex plebe comites, consilium simul et auctoritas, aderant.

Uppon the relation of Tacitus Grotius notes: that these princes, in dignity of discent and office, are the same which afterwards the barons and nobles were^h; and that the gouvernement, among them, was not such as among the Gauls, in Cæsar's time, when the people were esteemed as servants. Butt the centeni ex plebe, joyned to the princes, were the magistrates who, together with the princes, Cæsar mentions to have distributed the possessions. And he saith; that among the Germans; "there were two counsellors; a lesser in which the dayly matters, and which often happened, were determined; this was constituted of the princes only: and a greater counsellor, which had the supream power; and that was composed of both the estates," that is of lords, and commons, with their princeⁱ.

Pasquier compares the present diettes in Germany (contrary to Grotius his opinion) to those antient counsellors of the Gauls; where he saith: "that in the same manner as Gaule antiently had their diettes; we see att this day, Germany maintaines in greatness her empire^k."

Of this constitution, of the emperor, the lords spirituall and temporall, and the cittyzens or commons, the germane diett continues to this day; and hath bin so in all ages, with some variation in the estates. For of later years, by the pope's golden bull which some doe attribute to Charles 4. others to other times^l; wherof there is no certainty, more then this: that by a tacite consent of the estates

^h De antiquit. reip. Bat. f. 12. 13. Sunt hi principes dignitate generis, ac muneris, idem qui postea barones, ac nobiles. ⁱ Concilium duplex fuisse, minus quo res quotidianæ et sæpius occurrentes ordinabantur, id e principibus solis constituisse; majus, penes quod summa rerum potestas, idque compositum ex utroque ordine.

^k Pasquier recherches f. 8. De la mesme façon que la Gaule s'entretenoit jadis par diettes, nous voyons aujourd'huy l'Allemagne maintenir en grandeur son empire.

^l Paurmeistr. de jurisdictione l. 2. c. 2. §. 38.

of the empire, the electors, and septemvirall election hath bin received; and the power and dignity therof settled, by the same consent, uppon the arch bishops of Mentz, Triers and Cologne, and in the king of Boheme, the psaltzgrave of the Rhine, the duke of Saxe, and the marques of Brandenburg; and these 7 princes electors have bin as a distinct colledge, or estate, from the other princes, which before that time, they were not.

Millerus divides the estates of the empire into 7 rankes. 1. The electors, ecclesiasticall and temporall. 2. The arch bishops. 3. The bishops to whome some other ecclesiasticall princes are joyned. 4. The temporall princes. 5. The prælats, and with them some abbeßes are reckoned. 6. The earles and barons. 7. The imperiall citties^m. He saith, that the ecclesiasticks doe not come to the diettes as spirituall persons, butt as princes of the empire; as our bishops did, by reason of their baronies; and, that the princes are called *proceres imperij*, and have votes in all the diettesⁿ.

Gothofred, and others, write of three estates under the emperor: as where he saith; "that the emperor is the head of the German empire, who hath under him three estates which, in publique counsell, use to consult together in common about the safety of the commonwealth^o." Then he reckons the 1. estate, of the 7 electors. 2. estate, of the princes ecclesiasticall and temporall, which are there named. And the 3. estate, of the free imperiall citties, the catalogue wherof is there inserted. In the titles of honor^p some lawyers of the empire are cited, who make the like division into three

^m Miller. c. 12. p. 82, 83.

ⁿ Millerus p. 125. 131, 132.

^o L. 2. 5.

75. Caput imperii germanici imperator est, qui sub se habet tres ordines qui, in comitiis publicis, una de salute reipublicæ in commune consulere solent. ^p Tit. hon. Seld. f. 433.

estates, the electors, the princes, and the free citties: and in the second member they include all who have voice in the reickstag, or diette, besides the electors; and they are barons, and all above barons, or lords equall to them. Uppon all their accounts, divisions, or subdivisions, the resulte is cleerly this: that the German diette is composed of the emperor, the princes or lords spirituall and temporall, and the cittizens or commons.

Grotius, before noted, affirmes that, by the government of the three estates in his countrey, "the princes, and nobles, and commons have a long time flourished." He saith, that the care of the commonwealth was commended to the brother of Albert; "yett so as he should governe it by the counsell of the barons, and of those descended from barons, of knights and esquires, (which are degrees of nobility,) and of the good townes:" and in the same place he mentions an assembly of the nobles, and of all the citties; and saith, that it appears by many examples that "not only the greater, but the lesser citties likewise were called to their publique councells¹." In summe, heere we find plainly the prince, with the lords, and commons, together in their publique councells.

Since their defection from the king of Spayne, some of the nobility who joyned with them have allowed to them, and the eldest of their families in succession, a place and vote in their publique councells; and they, together with the deputies of citties, doe make up their supreamc councell which, att this day, is called the assembly of the states generall.

¹ De antiquit. reipub. bat. f. 42, 43. Principes et nobiles et plebs diu floruerunt. f. 34. 39. Sed ita ut eam ex baronum, baronibus ortorum, equitum scutiferorumque, (gradus hi sunt nobilitatis,) et bonarum urbium consilio administraret.—Convocato nobilium et omnium oppidorum conventu. S. 40.

It is time to hasten to a conclusion on this argument; which shall be with the description of the three estates in the Ricksdagh of the Swedes and Gothes: wherein I shall give little trouble by quotations, butt briefly communicate what I had from the members themselves of that councell; and wherof I was an eye and eare wittnes uppon the place. Their publique councells are two, the heredagh, and the ricksdagh, both consisting of king, lords, and commons: butt the ricksdagh is the supream, and the heredagh, butt a kind of abridgement of the ricksdagh; consisting of a lesse number of the lords and commons than the other whose members, of the cittyes and boroughs and boores, are chosen by the respective places that send them. Butt the members of the heredagh are such as the king perticularly summons to attend him in councell, and he summons some of each estate; butt with this councell, I shall not take up time. The supream publique councell is the ricksdagh, consisting of the king, the lords spirituall and temporall, and the commons.

These publique councells, (as one of their learned countrymen avowched,) had their beginning for many ages past, a long time since, wherof the foundation is not to be found. Some among them goe as high as to the Hebrewes for their originall of these councells; and that they inferre partly from the resemblances to the Jewish publique councells, wherof somewhat is before noted. They alledge, that their auncestors, the Scithi, had much intercourse with the Hebrewes, and knowledge and imitation of them and their customes; especially some of them being planted in those parts of Asia, which are not farre from the land of Canaan. They remember their citty of Scarah built, and so named in honor of Sarah Abraham's wife, by one who was their servant; and the citty of Upsale which tooke its name from the river Sale, and Uppe descended from Japhet; with
 4 other

other conceits of the like kind, which perhappes would require more time and beliefe than can easily be found for them.

Certainly their publique nationall councells arose with their civill society, heere as in other countryes, though probably in the beginning not so distinct; and in the same methode in every parte of them as they are att this day, and have bin for about 200 years last past; when their division hath bin by some of their authors, and seemeth to be so in their practise, into 4 estates besides the king: that is 1. the nobility; 2. the clergy; 3. the cittizens; 4. the countrymen, whom they as in Germany doe call the boores; yett all these come butt to the same account of king, lords, and commons in their ricksdagh.

The nobility of Sweden consisteth of three distinct rankes: 1. of the earles and barons or graves, as they call them; 2. of gentlemen of antient discent and pedigree; 3. of such as are newly made noble, or created gentlemen by the kings patent, under the great seale of Sweden: the names and coates of armes of all of them are published, and none butt such enjoy the priviledges and title of gentlemen in that countrey; all of them are in number about 250, who are much after the manner of our antient lesser barons in England. And both of the greater and lesser nobility of Sweden, one only out of each family, the eldest, and who is the head or chiefe of the family is summoned; and bound to be present, unlesse he hath some imployment abroad, or lawfull excuse for his absence; and hath place, and equall with the rest, in their ricksdagh.

The clergy there are distinguished into 3 sorts: 1. the bishops; 2. the superintendents; 3. the deputies, or proctors, of the clergy or ministers. The bishops are, one arch bishop of Upsale, and 8 other
L 2 bishops,

bishops, viz. of Lincopen, of Scara, of Stregnes, of Arbrough, of Vexen, of Aboa, of Vibourgh, and of Reval. There are likewise 7 superintendents, viz. of Colmar, of Gothenbergh, of Carolstadt, of Gothland, of Dorpaten, of Hermosum, and of Narven: and their power, (though not their title,) with their places and suffrage in the ricksdagh, is much the same with the bishops.

Besides these, there are divers officers called provosts, in each diocese, wherof every one hath inspection into 12, 15, or more parishes; which parishes have also their respective chapleins, and pastors, which are ministers of the gospell. These officers, together with the severall ministers in such diocesse, are called together by the respective bishops, and superintendents, uppon the king's letters or writs directed to them for that purpose: who forthwith calling a synode, or congregation of the clergy, they choose in every diocese 10 or 12 ministers, more or lesse according to the greatness and quality of the respective diocesses and bishopricks, which ministers each bishop and superintendent doth respectively associate unto himselfe; and they are like unto the proctors of the clergy, which our records mention in our antient parlements, and which in effect are the same thing in the convocation house att this day.

The cittizens are chosen by the inhabitants, and freemen, of the severall citties which use to have their deputies in the ricksdagh. They are in Sweden, Gothland, Finland, &c. and are reckoned to be above 70, a catalogue wherof is to be seen. The chiefe of them are Stockeholme, Upsale, Norcopen, Gothenbergh, Nicopen, Calmar, Geval, Falna, Wisby and the rest. Out of each citty, which hath the right of sending members to the ricksdagh, either the consull or head officer, with a senator, (as we stile them a common councill man) or a cittizen of the citty, joyned with him;

him; or some senator with another cittizen, or two cittizens or burgesse, and in some boroughs butt one burgesse, are chosen by the inhabitants of the respective citties and boroughs; and impowered by them, as their deputies, to act and consent in the ricksdagh: and the number of these deputies is about 120. And none are capable of this trust butt the very cittizens, and inhabitants of the places whose deputies they are.

The boores, or countrey men, are indeed such as doe till the land, and are imployed in husbandry affayres: they are of three sorts; 1. those that doe possesse their owne proper inheritance, paying a certain yearly recognition, and are called shattbonders, like our smaller freeholders within mannors, paying quit rents. The second sort are those who occupy the crown lands which are immediately annexed to the king's revenew of the kingdome; and they are called cronobonders, like our farmers of the king's lands. The third sorte are those who dwell uppon, or farme the lands of gentlemen; or have their estates by guift or purchase, or by any other right or title, as our ordinary farmers and coppingholders; and these are called fressebonders.

All Sweden is divided into severall provinces; viz. Upland, Sudermanland, Ostrogothland, Vestrogothland, Smaland, Vermeland, Halland, Neutia, Vefmannia, Dalecareia, Gestrina, Helphengia, Medelpagia, Angermannia, Hiemptia, Bothnia, east and west Lapland, north and south Finland, Savolaxia, and Carelia. I mention not Livonia, Pomerland, or Bremen; bicause the inhabitants of those cuntryes send not to the ricksdagh, or doe appeare by their deputies there.

The provinces before noted are subdivided into severall precincts, or territories; and of the boores or countrey men sometimes one, sometimes two, according to the largenes of the præinct, are elected

electd by the inhabitants of each territory. And of them there comes to the ricksdagh about one hundred and fifty boores : no gentlemen, or others butt boores themselves, being capable to be chosen, and to represent the boores in the publique councells. In which plainly appeareth the same frame and constitution which was in our antient English parlements ; of king, lords spirituall and temporall, proctors of the clergy and the commons. And this their old chancellor affirmed to be as antient as any of their records, histories or traditions doe reach unto. Their word for a gentleman signifies a nobleman ; and the gentlemen members of their ricksdagh have the same priviledges as their greater nobility have. Heerin is some difference, that the deputies of the precincts for the boores must be no other butt boores, who have an equall vote with the nobility ; and is much heerin, though greatly otherwise as to other matters, for the freedome of these commoners : their nobles cittizens and burgeses, their king lords and commons, is the same with ours.

C H A P. LXXIII

So that the said knights.

IT hath bin before in part noted, that the tenants of great men and mesne lords, as well as of the king, were sometimes called knights: and we find frequent mention in our law bookes of reasonable aid to make the son a knight; that is certain somes of money levyed on the tenant to make the son and heir apparent of the lord a knight; att least if the lord were a knight himselfe. By the statute of Westm. 1. it was certaine in the case of a common person: and by another statute it was made alike in the king's case. And by the taking away of tenures, that charge is taken away also^a.

Knights have had, with us, peculiar respects and notes of honor; as appears in legall proceedings. The graund affize in a writ of right, which is as a jury, and the highest triall by oath that is in the law, is to be chosen by knights; and, out of knights, if they can be found: and none of lesse quality should either chuse, or be chosen, unlesse there be not knights enough to fill the affize. Uppon an effoin de malo lecti, 4 knights were to be sent to take view of the defendant; and it was not sufficient, if the sherife sent esquires, or any that were of lesse dignitie^b. Upon trialls also of

^a Breton c. de prises des avers c. 36.—25. E. 3. c. 11.

^b 39. E. 3. f. 2. 7.

H. 4. f. 3. & 20. Br. tit. Droit de recto. 18. 15. E. 4. 1. Bracton. l. de Effoin. 3.

H. 3. tit. Effoin. 186. 187. 120. Regist. origin. f. 8. 9.

actions,

actions, where a baron of parlement is plaintiffe or defendant, the baron may justly challenge the pannell, unlesse one knight att least, be returned of the jury: which as it is a priviledge to the baron, so it is an honor to the order of knighthood.

Breton, in the person of E. 1. recites the law, that some offences are more punishable, (as a trespass committed in time of peace by ruffians and other vile persons,) against knights, or other honorable persons: in which case we will, that if the ruffian be attainted att the suit of any knight, "that he hath stricke the knight by felony, without cause given by the knight, that the ruffian doe loose his hand wherwith he committed the trespassse^c." And in the pipe rolles of H. 2. one is fined 100 l. for striking a knight: and another, att 40 markes, bicause he was present when the knight was compelled to sweare, that he would not complaine of the injury^d.

It hath bin before noted, that uppon proces to levy the kings dets, the equitatura, or the horse and armes of a knight, were not to be medled with: and the reason is given, "least he, who in dignity is made a knight, be forced to go on foote^e."

For the use of seales, to belong to knights only, there is a mistake; and the use of them was promiscuous to any^f. Also the having a supply of full age, by receiving the dignity, is a speciall honor given to the knighthood. For though it be regularly supposed in law, that no heire of a tenant, by knights service, is able to doe the service himselfe, untill he be of the age of 21 years; which is the ground

^c Cap. d'Appeal des maihems—Que il eit feru per felonie, sans desert de Chivalier, que le Ribaud perd son poin dont il trespasssa.

London. PLITA Ranulphi de Glanvilla.

^d Rot. magn. Pip. 29. H. 2.

^e Gervas. Tilber. MS. in recept.

Scac. Westm. 1. c. 43. Reg. orig. f. 100. Ne qui dignitate factus est eques pedes cogatur incedere,

^f 2. tit. hon. Seld. p. 785.

of wardships: yett if any such be knighted, of what age soever he be, he is adjudged as of full age, and shall not be in ward. For in regard that, by the lawes of honor, he is adjudged to be a knight; therefore by the common law, he is likewise adjudged so able to doe the service, as that his body needes no further tuition of a guardian over it. And so is the law in practise att this day: and so it was antiently, as appears by the grand charters of king John, and H. 3^e.

The priviledge of precedence, and place given to knights, is sufficiently knowne; and of all other honors, and dignities. He hath precedence of all esquires, except the sons of lords; and, of those knights which are puisne to him in the creation, except by office they have place before him: his eldest son is by law an esquire, wherof more may be noted elsewhere.

For the place and precedence of the lords, and great officers, an act of parlement was made under H. 8. intituled "for the placing of the lords:" and they are there sett downe, according to their severall rankes, and orders^b. And the king, who is the fountaine of honor, determines all controversies in his owne person, touching place and precedence of all persons. Therefore king James made two decrees uppon questions of precedence; the one touching a controversy between the younger sons of viscounts and barons, and the baronets. Another decree was made, by the same king, touching the order of baronets; and that was also under the great seale¹. And there are divers decrees, about the laws of precedence, in divers patents to particular persons.

^a 5 Ja. Co. 6. rep. f. 73. Plowd. Com. f. 166. 167. 8. rep. Co. f. 173.

^b Milles, Catalogue of Honor, p. 62.

¹ 10 Jac. rot. pat. part. 10. m. 8.—

14 Ja. rot. pat. pt. 2. n. 24. 13 Martij.

In like manner there be orders of precedence touching ecclesiasticall persons, most of which are sufficiently knowne.

By the imperiall law, knights had divers priviledges antiently in making of testaments, in being free from imprisonment and such more: butt this was (say some of their lawyers) if they lived in the wars, and were truely milites. Others say, that they ought not to be imprisoned for debt, nor putt to torture, by reason of their dignity. Others deny that knights, made as in these times, have any of those antient priviledges belonging to them^k.

In France the same custome was as with us, for aides due to the king, and other lords, when their eldest sons receive this dignity. And when one is there made a knight, though he were not a gentleman before, yett by being knighted he becomes noble. These knights had likewise a peculiar right of using a seal, which others had not^l.

The knights of Spayne had great regard, and priviledges. Some were of opinion, that for 7 years after his knighthood, he was to ride with his sword and cloake in time of peace; and, all armed in the time of warre. None was to sitt before them in the church, but kings, prelats, or great lords; or other, clergy men, that reade divine service^m. The like order was observed in giving the pax to them. None was to sitt att the table with them, or to contend in argument with them, unlesse he were a knight; or eminent for bloud, or virtue. None might breake his house, butt by expresse

^k Tiraquel. de nobil. & Petr. Belug. Spec. rubr. Princ. 20. §. 8. Bald. ad l. 1. i. tit. Qui bonis cedere possint. Fr. Zoanet. tract. de Imper. Rom. §. 68. &c.

^l Choppin. de Dom. 3. l. 3. tit. 4. art. 8. & tit. 26. §. 14. Bertram. argentr. in Consuet. Brit. art. 88.—August. de Paz, l'histoire de plusieurs maisons de Bret. p. 523.

^m Partid. l. 23. 24. &c. tit. 21. pt. 2.

commaund of the king, or of his chiefe justice^a. His horses and armes were not to be taken from him in any suite, (as it was with us,) unles nothing else were to be found; and in that case also, the horses of his own saddle were priviledged^o. And if any of his goods were to be attached, it must be whilest neither he, nor his wife, were present. He was not to be putt on the racke, unles for suspition of treason: neither was he to be putt to death, as an ordinary person; butt, to be beheaded. Whither these, and severall other priviledges anti-ently belonging to their caualleros, are allowed to the present knight, is disputed by their lawyers.

The Swedish knights (as ours) are possessors of fiefs, which they hold of the king; and conceive themselves so bound therby, that uppon publication of any warre they ever with readines, att their own charge, prepared themselves to be a part of the army^p.

For matter of place, and precedence we find among the Jewes, by their Misnajoth, and the Jerusalem Talmud, this list. A master of the law is before the king; the king is before the high priest; the high priest, before the priest annointed for the warre; the annointed for the warre, before a chiefe of any of the priests courses; such a chiefe, before the head of a family; the head of a family, before a commaunder of the revenue of the temple; such a commaunder, before a treasurer of it; a treasurer, before an ordinary priest; an ordinary priest, before a Levite; a Levite, before an Israelite; an Israelite, before a Mamzer (or bastard gotten in incest;) a Mamzer, before a Nethin (one discended of the Gibeonites;) a Nethin, before a Profel-ite; and a Profelite, before a manumitted Bondman^q. Butt this is

^a Sinon por mandado del Rey, o por mandado de Justitia.

^o Ordin. Castell.

l. 4. tit. 1. l. 12. & ib. Perez.

^p Olaus histor. septentr. l. 14. c. 7.

^q Tit. Horaijoth. f. 48. col. 2. & Babilon. ad eund. f. 18.—Deut. 20. 2.—1 Chron. 24. Lu. 1. 5.—Deut. 23. 2.

to be understood, so long as they be all of equall quality ; and seemeth only for places att the schooles, or att publique lectures of their law : and if a Mamzer were well studyed in the law, and the high priest ignorant, such a Mamzer is before such a high priest*. Generally in place and precedence, with them, seniority of birth was regarded : which cause of precedence was in old Sparta, and especially in the colledge of Augures of Rome, who gave it to the eldest, as due to them, to have place before the younger ; which also is generally respected. Yett offices, both military and civill, and degrees and titles of honor, according to the pleasure of the bestowers of them, and the lawes of severall countryes, doe accordingly carry place and precedence with them.

* Rabbi Abraham Zacuth. Sepher. Juchasin. f. 16. a.
tute. Majores natu augures anteponebantur.

* Cicero de Senec-

C H A P. LXXIV

Have full and sufficient power.

THIS writ directs, that these knights of the shire shall “have full power:” they are to be plenipotentiary messengers, and deputies of the people; without any secret instructions, or reservations of power, which may retard the great affayres of the nation; such as princes oft times use to give to their ambassadors, and agents. Yett their power is not to be like that which the pope assumes to himself, when he recites in his bulles: “although, of right we cannot doe it; yett out of the fullnes of our power we graunt indulgence^a,” &c. Their power must be a full power; butt not such a fullnes of power as to doe what of right ought not to be done. And therfore in some difficult propofalls from the king, although they had full power from their countryes; yett for the weightynes of the buisnes they, in prudence, have thought fitt to answer in this manner.

“The commons made answer, that they knew and tendred the king’s estate, and were ready to aid the same; only in this new device they durst not agree, without further conference with their countries: and so, praying respite untill another time, they promise to travell to their countries^b.”

^a *Quanquam de jure non possumus, tamen ex plenitudine potestatis, &c.*

^b 13. E. 3. rot. parl. n. 9.

As they are to have full power, so it must be "sufficient;" and if it be "sufficient" for the buisnes for which they are summoned, it is "full;" and so the full power is a sufficient power. And this is given to the knights by the indentures, sealed by the freeholders, in which commonly are inserted the following claufes of the writ; "to doe, and consent to, such things, &c. which are the generall powers given them.

C H A P. LXXV

For themselves.

IT is the wisdom of our law, that acts of parlement are equally binding to the makers of them, as to the rest of the people: and though the knights of the shire doe represent all the commonaltie of the countey, and bind them all by their publique resolutions; yett are they not exempt themselves from the force of those lawes which are made by them; but, are equally ingaged to submit to them, and obey them, as those whome they represent ought to doe.

If they graunt a tax uppon the people, they themselves must pay their share of it: if they make a severe law, they themselves, as much as others, are lyable, to the penalties therof. They cannot prejudice the people's rights, and liberties, butt they prejudice their owne. They are impowered for themselves, as well as for the commonaltie of the countey; and shall tast themselves, as well as others, of the good or evill fruits of their consultations: and therefore will be the more provident, and wary, in their determinations.

The difference between the constitution of the lords, and commons, in parlement [is this.] The lords represent themselves only: the members of the House of Commons are there for themselves, and for all the commonaltie of the severall places for which they serve. Yett the lords doe not only act for themselves; butt joyning with the commons, and having his Majestie's royall assent, their acts thus passed are for themselves, and for all the lords and commons of the kingdome.

C H A P. LXXVI

And the commonaltie.

IT is a great trust reposed in the knights of shires, to have the power of the whole commonaltie of a countey, of many thousands of people, conferred on them. So that whatsoever these knights, with the rest, shall doe and consent unto, in parlement, doth bind all the commonaltie not only of the countey for which they serve, butt of the whole kingdome. And bicause the members of the House of Commons have power for "the commonaltie" of the severall counties, and places, for which they serve; therefore they are frequently stiled the commonaltie, that is, by representation they are the commonaltie: and their acts are the acts of "the commonaltie," from whom they have their power, and who are bound by them. So it is expressed in the statute of Westm. 1^a. "the king by his counsell, and by assent of the archbishops, bishops, abbots, priors, earles, barons, and all the commonaltie of the realme thither summoned, hath ordeined, &c." In another statute^b the expression is, "the prelates, earles, barons, and the commonaltie, have said, &c." So the statute, which releaseth the malteut^c of wools, saves the custome of wools graunted before by "the commonaltie." In his son's time, it is said, the king, "by assent of the prelates, earls, barons, and commonaltie, hath made these acts, &c." The like is to be

^a 3. E. 1.^b 7. E. 1.^c In the original statute, "*male toute*." (M.)

feen in fundry other acts of our parlement where, bicause the members of the House of Commons doe represent, and are impowered by, the commonaltie of the severall places for which they serve; therefore their acts are called the acts of, and doe bind, the commonaltie of the whole kingdome^d.

^d 25. E. 1. c. 7.—31. E. 1. c. 1. Stat. Yorke. 12. E. 2. 1. E. 3. c. 1. 2. E. 3. 14. E. 3. Stat. 2. 15. E. 3. c. 1. 25. E. 3. præamble. 31. E. 3. præamble. 5. R. 2.

C H A P. LXXVII

Of the said countey.

THE freeholders of the countey, who can dispend forty shillings yearly, doe give full and sufficient power to the knights elected by them to serve in parlement, for themselves, and for the commonaltie of the said countey. To this some have objected; why should the freeholders who have 40s. per ann. bind all the rest of the inhabitants of the countey, who are as much the commonaltie of the countey as those freeholders are; and their lives, liberties, and estates as much subject to the power and acts of those knights, as the freeholders who chuse them; and therefore in equity, and reason, all the rest of the commons of the countey, as well as the freeholders of 40s. per ann. ought to have their votes in the election, and impowring of these knights of the shire, who represent and act for them?

To this may be answered; that before the statute made in H. 6. time, which restraines the electors to freeholders of 40s. per ann. all the inhabitants, or att least all the freeholders of the countey, had votes in the election; and they, according to custome and law, chose only two persons to represent them in parlement, and gave them full power; who, with the rest of the members so impowred,

made a law ^a reciting: "that by reason of the outrageous^b, and excessive number of electors, manslaughters, riots, batteries, and divisions did arise; to prevent which it was enacted, that none should be electors, butt such freeholders as could expend 40 s. per ann." So this was by a law, wherein their owne consent was involved; and hath so continued for 230. years. And it were daungerous to chaunge settled lawes made for good order, and to prevent mischiefe.

^a 8. H. 6. c. 7.

^b The act in the original reads, "*par trop graunde et excessive nombre dez gentz demurrantz deinz mesmes les countes.*" Sir Bulstrode Whitelocke seems to render *trop graunde*, by *outrageous*: and the vulgar translation has three epithets, viz. *very great*, *outrageous*, and *excessive*. Vid. *Statt. at Large*, Vol. i. p. 584. Edit. by Ruffhead. (M.)

C H A P. LXXVIII

And the said cittizeng.

“**A** Citizen is described by Bodin to be nothing else butt a free-man, who is obliged to the supream authoritie of another.”^a That a father of a family, when he goes abroad out of his owne house where he hath domestique rule, and joynes himselfe with other princes of families for the management of their common afayres: then he looseth the name of a lord, and father of the family, to make himselfe a fellow cittizen; and goes out of his house, into a citty. And properly a cittizen is one who inhabiteth in a citty, or is free of a citty. Yett by our lawe, (and the lawe of other countries,) one may be a free man and a cittizen of London, and dwell at Yorke^b.

There is a cittizen of a citty; a cittizen of a commonwealth; a cittizen of the world; and a cittizen of the new Jerusaleme, a fellowe cittizen of the saints. Of cittizens of perticular citties somewhat hath bin noted. A cittizen of a commonwealth is a terme usuall among the old Græcians, who called governement, politeia, from their word for a citty^c: and all subject to one governement, of one state, were called cittizens of that commonwealth bicause

^a Jo. Bodin. de Repub. l. 1. c. 6. p. 71.—Est autem civis nihil aliud quam liber homo, qui summæ alterius potestati obligatur.

^b H. 13. Jac. MS. rep. cas. 20.

H. 7.

^c Πολιτεία πόλις.

some eminent citty, as Sparta, Athens, and the like, was the head of that government, and commonwealth. Therefore all who were subject to that cittie, and injoyed the priviledges therof, were termed cittizens of that commonwealth, whersoever they did inhabite. So it was of the cittizens of Rome: and all that were of the orbis romanus, of the roman world, of that empire, were cives romani, cittizens of Rome, by the old constitution of Antoninus Pius^d; and the rest were by the Romans called gentes, or gentiles, as well as barbari. And the Latines, in the idiotisme of christianity, att first used their worde gentes, for the same which our english most commonly turnes, gentiles, pagans, and heathens; especially in the new testament. The French say payens, for pagans; and the Dutch, heyden or heydenen, which is butt our heathen. The Latines borrowed this speech from the Græcians, who use to expresse those nations which are different from themselves, by the name of the nations; as in that of our Saviour instructing the Jewes, where he saith: "all these things the nations, or the gentiles, seeke." And so that greeke worde signifies most frequently in the Acts of the apostles, and the Canonick epistles^e.

The Græcians tooke this appellation from the Jewes, who used the word "goim" for all other nations butt themselves; as we have it in Moses, where he saith: that the posterity of Japhet divided "the isles of the nations." So one of their Rabbins saith: every man that is not an israelite they call "goi;" as if you should say, he is of another nation^f. Thus we call all those who are not christians, or

^d F. de Statu homin. l. 17. & novel. 78. c. 5. 6.

^e Τα ἔθνη πάντα γὰρ

ταῦτα τὰ ἔθνη ἐπιζητεῖ. Mat. vi. 32. Lu. xii. 30. Acts xxviii. 6. Rom. i. 5.

^f גוים Gen. x. 5. גוים נא — Elias Levita in Thibit. Rabbi D. Kimchi, &c.

jewes, gentiles; and those who are faithfull christians we call cittizens of the new Jerusalem. And the apostle useth the like expression, where he saith. "Now therefore ye are no more strangers, and foreigners; butt fellow cittizens with the saints, and of the household of God^s." St. Paul escaped the malice of his aduersaries by challenging the priviledge of being free borne, a roman: how much more, and greater priviledge, have those who are fellow cittizens with the saints? such ought all those to be who are elected to serve God, their king, and countrey, in those high and weighty affayres of parlement committed to their trust.

† Eph. ii. 19.

C H A P. LXXIX

And burgesſes.

THERE is no difference between a cittizen and a burgeſſe ; butt, one is a deputy uſually of a greater, the other of a leſſer town or place : butt their power is alike, and their truſt the ſame. The writ directs full and ſufficient power to be given to the knights of ſhires ; and, full and ſufficient power to the cittizens “ and burgeſſes.” Their commiſſion is all alike ; and their power, equall. The vote of a burges is of the ſame force with that a cittizen, or of a knight of the ſhire ; and there is no diſtinction of power, or ſuffrage, amongſt them. And ſo they were formerly called, and eſteemed. The inhabitants of citties were called “ burgenſes : ” and the Saxons, and Germans, called a city a borough, and a borough a citty. Livy and Strabo calles them caſtellani : and burgeſſes are defined to be inhabitants of townes, and boroughs, incloſed and fortifyed. Littleton ſpeakes it ſhortly and cleerly : that “ from the antient townes, called burghs, come the burgeſſes to parlement^b.” And the coment, uppon him, ſaith : “ that every borough incorporate, that had a biſhop within time of memory, is a cittie.” So that in effect, a borough, and a citty ; and cittizens, and burgeſſes ; differ only in name, not in power, or priviledge.

^a Spelman Gloſſar. verbo Burgenſes.

^b Littleton Sect. 164.

And

And as they are the ſame in commiſſion ; ſo ought they (as neere as may be) to be the ſame in judgement. And doubtles both knights, cittizens, and burgesſes ; king, and lords, and commons ; ought to be the ſame in their deſignes, and indeavours to ſett up the honor of God, the union of his peace, the honor of the king, the peace of the kingdome, and the good and wellfare of all the countyes, eitties, and boroughs of England.

C H A P. LXXX

For themselves.

THIS is a good word in the opinion, and practise, of some members in former publique councells, “for themselves;” who have bin so much for themselves, that they have found wayes, by being in such employments, to build up their owne fortunes though upon the ruine of others. I may discourse the more freely on this subject, not having added fixpence to my estate, by all my employments for 20 years last past: butt many have growen rich, and bin exalted to præferrements from those employments; and continue fortunate. Too many heertofore have bin more for themselves, than for the publique; wheras they were impowred “for themselves, and for the commonaltie:” and surely the duety of that commission is not performed, where themselves grow rich, and the commonaltie poore. It is a hatefull thing to all, when trustees seeke their owne greatnes, and advantage; to the prejudice of those for whom they are trusted: when they are more sollicitous, and diligent, to increase their private wealth, than the commonwealth of the kingdome. They never were impowred to be thus, “for themselves.” It was one of the qualifications of Jethroe’s judges, to be “men hating covetuousnes;” and the Rabbins call it contempt of ritches. Surely none are greater judges than members of parlement: and none ought more to hate covetuousnes, and to contemne riches, than they. Our lawes have bin very severe against

the offence of bribery, and taking gifts, wherby judges and officers use to enrich themselves; and this was extended even to private persons: insomuch as the lawes of king Æthelstan provide, that “if any one take a reward of a thief, wherby another’s right is prejudiced; he shall forfeit the price of his head”. And in our antient law booke called the *Mirroir of justices*, it is recited for the law, in the french of that time, that, “to those officers who receive their certaine salary from the king, it is not lawfull to take any thing of any of the people^b.” As unlawfull it is for those who serve in parlement, to whome the law allowes a certaine salary, to take any gift, bribe, or reward of any of the people who have buisnes depending in parlement: and more criminous, and punishable in them, than in inferiour judges.

The statute of magna charter promiseth; “we will sell to no man right, or justice^c” which was the good old law of Edward the confessor. Butt (saith Henry Huntington) in the time of W. I. after he had wholly subdued, and settled, the English under his subjection; “all the princes, or chiefe officers, were so blinded with the covetousnes of gold and silver, that it might truely be said of them: no man cares from whence he hath it; butt have it he must.” And, “they, who were called justices, were the head of all injustice^d.” And this will be the case of a kingdome, if their publique counsellors shall seeke themselves, more than the publique good.

^a Leg. Æthelstan. c. 64.

^b *Mirroir des justices* c. 2. §. 4. Et à ceux Ministres que pernent leur certaine de le Roy, ne list rien aprendre de nul del people.

^c C. 29. Nulli vendemus rectum vel justitiam.

^d Hen. Hunt. hist. l. 6.

p. 370. Principes omnes auri et argenti cupiditate adeo cæcati erant, ut illud de iis verè dici possit: unde habeat nemo quærit; sed oportet habere.—Qui justiciarii vocabantur caput erant omnis injustitiae.

Mathew Paris relates the case of Henry de Bathoniâ, a learned knight and skillfull in the lawes, one of the justices and principall counsellors to H. 3. who "gaped so after shamefull gaine, by right or wrong, that in one Eyre of justice, it was said, he appropriated to himselfe more than 200 l. lands a year^e." And in his office of justiceship he feared not, treacherously, to empty other men's purses to fill his owne; growing therby in a short time extraordinary rich in rents, monies, gold and silver: which hath bin the case of other counsellors since that time. The judgement against Henry de Bathe, after much contest about him, was a fine of 2000 markes imposed in parlement.

The next memorable example of justice against corrupt, covetous judges, and more severe than the former, was that of king E. 1. when the chiefe justice Hengham was fined 7000 markes; Adam de Straton was fined 32000 markes; and nine other judges, in severall great fines: and Sir Thomas Weyland chiefe justice had all his goods, moveable and immoveable, seised; and he was banished the kingdome. Uppon which the historian breakes out. O divine, and still necessary severitie; only able to breake the pernicious combination of men that, under the profession of law and offices of justice, make marchandize of honor, justice, law and conscience: which cannot, in the end, but bring forth ruine, and confusion! Att this time (saith our author) the king constreined all his justices to sweare, that from thenceforth they would take no pension, fee, or guift of any man; except only a breakefast, or the like present^f. Butt the oath of the justices was more fully en-

^e Mat. Par. p. 785. 788. 793. 794. an^o. 1251. 35. H. 3. Adeo turpibus, per fas et nefas, emolumentis inhiabat, ut in unâ solâ itineratione justiciariâ dicebatur, plusquam ducentas libratas terræ sibi appropriare.

Chron. 17. E. 1. &c.

^f 17. E. 1. Speed Hist. p. 635. Stow

acted in his grandchild's time: in which oath a clause is, "that ye take not by your selfe, or by other, privily nor appertly, guift nor reward of gold nor silver, nor of any other thing which may turne to your profit, unlesse it be meat or drinke and that of small value, of any man that shall have any plee or proceffe hanging before you, as long as the same proceffe shall be so hanging; nor after, for the same cause: and that ye take no fee, as long as ye shall be justice, nor robes of any man great or small; butt, of the king himselve^s." The same clause, in effect, is in another act two years after.

The next precedent of note was the case of Thorpe, chiefe justice of the king's bench, and judge of affize; "who for taking bribes was indicted before commissioners who adjudged, that Thorpe malitiously, falsly, and rebelliously as much as in him lay, and for the causes expreffely known to him, had broken the oath of our lord the king, which he had to keepe towards his people: that therfore he should be hanged^h;" and that all his lands and tenements, goods and chattells, should remaine forfeited. The king stayed the execution; and caused to be brought before him, in full parlement, the recorde of judgement had against Thorpe; and caused the same to be openly read before the nobles of the parlement, to heare every of their advice: all whom affirmed the judgement to be rightly given; considering that he had, against his oath, received bribes. And therefore it was agreed by the whole parle-

^s Stat. 18. E. 3. c. 8. Oath of the justices.

^h 20. E. 3. c. 1. 25. E. 3. rot. Parl. pt. 3. m. 2. dors. 25. E. 3. rot. pat. pt. 1. m. 17. Quia prædictus Willielmus Thorpe, qui sacramentum domini regis, quod erga populum suum habuit custodiendum, fregit malitiose, false, et rebelliter in quantum in ipso fuit; et ex causis supradictis ad ipsum Willielmum expresse cognitiss, ideo suspendatur.—25. E. 3. rot. Part. n. 10.

ment,

ment, that if the like case should heerafter happen, the king might take to him such nobles as he should best thinke; and therin doe according to his pleasure. And this case is againe remembred, and cited in parlement, uppon the like occasionⁱ.

Richard Lyons was accused, among other things, for buying debts due to the king for small values; and for taking speciall bribes to pay some the king's due debt, by way of brocage. He was committed to prison, att the king's will; and all his lands, tenements, and goods seized to the king's use: and he was disfranchised^k.

In the same parlement the lord Latimer was accused by the commons, among other things, for that in Britain he and his officers had taken of the people, in victual and ransomes, against the king's will, to the somme of 24000 l. and other sommes^l. He was awarded in full parlement, by the bishops and lords, to be in prison; and to make fine, and ransom, att the king's pleasure. Whereuppon the commons required, that he might lose all his offices, and no longer be of the king's counsell: which the king graunted.

Att the same parlement William Ellis, for extortions as deputy to Lyons, was imprisoned; and made fine att the king's pleasure^m. And John Peache, for a monopoly to sell sweet wine in London, and taking 4s. 4d. a tun for it, was imprisoned att the king's will; and to make recompence to all parties grieved. And the lord Nevil, for buying the king's debts, and taking money of a lady, and others, to pay them; although that which he received of the lady was of her own good will: yett judgement of imprisonment, and losse of

ⁱ 10. R. 2. rot. parl. n. 9.

^k 50. E. 3. rot. parl. n. 17. 18. 19. 20.

^l N. 21. 22. 23. &c.

^m N. 31. 32.

lands, and goods, and offices, was given of him; and that he should make restitution of 95 l. to the executors of the ladyⁿ.

In R. 2. time the commons, in parlement, petition for remedie against the extortions of ordinaries for probate of testaments: and against the flights of false summoners, there uttered; unlesse the poore doe bribe them with money, which they call the bishop's almes^o.

The like proceedings have bin in parlement against soldiers, for undue taking of money: as against the bishop of Norwich; and after much debate the chancellor concludeth. That although the king might passe on the bishop as on a temporall lord, by reason that he tooke uppon him to serve him as a soldier, and had the sword carryed before him contrary to his profession; the king nevertheless for that time spared his imprisonment: butt for his other defaults, and villanies, the lords, by assent of the parlement, adjudged him to make fine and ranfome att the king's pleasure; and it was commaunded him, to have no longer the sword carryed before him^p.

Crossingham was accused for surrendering a castle in Flanders to the king's enemies, for money; and was committed to prison^q.

Sir William Elinsham, and others, for receiving severall sommes amounting to 20000 frankes of gold for giving up of holdes and fortresses, had judgement: to pay to the king of what they had received; and to remaine in prison, untill they had made fine and ranfome with the king^r.

ⁿ N. 33.—N. 34.

^o 2. R. 2. rot. Parl. n. 46.

^p 7. R. 2. rot.

Parl. n. 15. &c. & 23.

^q N. 17.

^r And of one of them (Sir William de Hurnedon), the body and goods to be at the king's pleasure. Cotton's Abridgement, p. 294. (M.)

In the same parlement the commons petition; that the justices of both benches, and barons of the exchequer, may be sworne before the king, lords, and commons, to doe without consideration. The answer is: they are sworne already; and, if need be, shall be againe^{*}.

In the same king's time, in parlement, Sir Michael de la Poole, earle of Suffolke, and chancellor of England, was accused for purchasing lands to a great value of the king, while he was chancellor; contrary to his oath to promote the king's profit: and though this was upon an exchange for customes, wherein the chancellor had an interest; yett because he had the king's land, and for that he tooke 100 l. of a prior before he could be admitted to a priory, of which his son had a graunt before; it was adjudged: that for breach of his oath the mannor and hereditaments, which he had of the king's gift, should be seised into the king's hands, with the meane profits; and the like for the lands exchanged, and for the profits which he tooke out of the priory; and he was committed to prison[†].

In H. 4. time the commons petitioned, that all the king's chiefe officers may be sworn to shun all briberie; wherof the attainted to loose all he hath. The king's answer is: that every such officer, upon attaint, shall be punished for his misdoing; otherwise, the statutes made doe suffice[‡]. In another parlement of this king the commons petition; that none of the king's chiefe officers, or judges, there named shall take any bribe, or reward, on paine to answer

^{*} 7. R. 2. rot. Part. n. 24, 25. [†] 10. R. 2. rot. Parl. n. 6. &c. In what is called Cotton's Abridgement, N^o. 12. it is: "After answer and replication made—the said earl, at the request of the commons, for the grievous offences against him surmised, was arrested by the king's commandment, and committed to the keeping of the constable of England; and after let to mainprise. (M.)

[‡] H. 4. rot. Part. n. 100.

treble to the king: to which in the margent it is written; it is respited by the prince and counsell^w.

In the parlements 18 and 21. Jac. Sir Giles Mompeffon, and Sir John Michel^x, uppon impeachments by the commons for promoting monopolies, corruption, and other misdemeanors; were fined and imprisoned; and Sir Giles, degraded of his knighthood.

The viscount of St. Albans, to the note, "that riches may be of use to buy men out of daungers, or troubles;" aunswears: that this is in imagination, not alwayes in fact, (wherof some have experience). For certainly (saith he) great riches have sold more men, than they have bought out. He gives this excellent counsell. "Seeke not proud riches; but, such as thou maiest get justly, use soberly, distribute cheerfully, and leave contentedly^y." If he had followed his own counsell, the sentence had not bin past against him in parlement for corruption; as hath bin noted before in his case, and in the case of the earle of Middlesex. Butt whosoever shall be desirous to inquire further into this matter, may find both in England, and other countries; that those in offices of trust, or judicature, who have bin most "for themselves," and taken unlawfull rewards of others; have usually, in the conclusion mett with the just reward of their crimes, the punishment due by law uppon such covetuous selfe-seekers.

It was one of the lawes which God gave unto his people from Mount Sinai: "thou shalt take no guift; for the guift blindeth the wise, and perverteth the words of the righteous." The same

^w 11. H. 4. rot. Part. n. 28. ^x 4. Instit. Co. p. 23.—Viscount St. Albans Lord Chancellor of England; the Earl of M. Lord Treasurer of England. (M.)

^y L. St. Alban's Essay of Riches.

is afterwards seconded : and it is one of the curses, upon him that taketh reward to slay an innocent person. The lords of the Philistines used this way of bribes to betray Samson : every one of them promising Dalilah 1100. pieces of silver^a. And such wayes are fitt for such as desire to follow the philistian precedents; or to be “for themselves,” as Dalilah was.

The covetuousnes of Achan was severely punished. He, and his sons and daughters, his oxen, his asses, sheep, his tent and all that he had, and gott by covetuousnes, were taken : and “they stoned him with stones; and burned them with fire^a, after they had stoned them with stones.”

The sons of Samuel walked not in their father's wayes; butt turned aside after lucre, and took bribes, and perverted judgment^b. The consequences of their covetuousnes, and wickednes, occasioned much misery to themselves, and to the people who followed their evill wayes: but the example of their father was illustrious. “Behold, heere I am; witness against me before the Lord, and before his annointed. Whose ox have I taken? or whose asse have I taken? or whom have I defrauded? Whom have I oppressed? or of whose hand have I received any bribe, to blind mine eyes therewith? And I will restore it you. And all the people justified him^c.” And may it be so with all the magistrates, and members, of our publique councells!

The men of Judah were not much “for themselves,” when they could say; have we eaten att all of the king's cost? or hath he given us any gifts? Every freeholder cannot say the same, of the knights for whom they gave their voices, in all times^d.

^a Exod. xxiii. 8.—Deut. xvi. 19. Deut. 27. 25.—Judg. xvi. 5.

^a Jos. vii.

24, 25. &c.

^b 1 Sam. viii. 3.

^c 1 Sam. xii. 3. 4.

^d 2 Sam. xix. 42.

The man of God refused the reward which king Jereboam offered him, though he had done a great favour for the king: and this was because of the word of the Lord^e. So the prophet Elisha having cured Naaman of his leprosy he, in gratitude, presseth the prophet; "I pray thee take a blessing of thy servant:" but Elisha answers; as the Lord liveth, before whom I stand, I will receive none. And he urged him to take it; but he refused. Only his servant Gehazi coveting, and receiving a present from Naaman, was rewarded with his leprosy^f.

In the charge of Jehosaphat to his judges, he bids them "take heed:" and telles them; "there is no iniquity with the Lord our God, nor respect of persons, nor taking of gifts^g." And if there be none with him, he will not suffer it with others.

The just man Job affirms, that "fire shall consume the tabernacles of bribery." The psalmist informes us whose darlings covetuous men are. "The wicked blesteth the covetuous, whom the Lord abhorreth." And among other graces, "he that taketh not reward against the innocent shall never be moved." And among sinners, and bloody men, he ranketh such "whose right hand is full of bribes:" and prayes to God, to "incline my heart unto thy testimonies; and, not to covetousnes^h."

The wise man is full of excellent instructions on this subject. "He that is greedy of gaine, troubleth his own house: butt he that hateth gifts shall live. A wicked man taketh a gift out of the bosome, to pervert the wayes of judgement. He that hateth covetousnes shall prolong his dayes. He that receiveth gifts over-

^e 1. Kings. xiii. 7. 8. 9.

^f 2. Kings. v. 15. 16. 27.

^g 2. Chron. xix. 7.

^h Job. xv. 34.—Psal. 10. 3.—Psal. xv. 5.—Ps. xxvi. 10.—Ps. cxix. 36.

throweth the land. A gift destroyeth the heart¹." The prophet laments the condition of the Jewes, saying of their princes; "every one loveth gifts, and followeth after rewards. Woe to them which justify the wicked for reward!" From this, and other the holy prophets, we have also good instructions for publique counsellors, and all other men. "He that despiseth the game of oppressions, that shaketh his hands from holding of bribes, he shall dwell on high. For the iniquity of his covetuousnes was I wroth; and, smote him. Every one is given to covetuousnes; therefore they shall fall: I will surely consume them. Thine end is come, and the measure of thy covetuousnes. Will ye pollute me among my people, for handfulls of barley, and for pieces of bread? In thee have they taken gifts to shed blood. Thou hast taken usury, and increase; and thou hast greedily gained of thy neighbor by extortion; and hast forgotten me; saith the Lord God. Behold therefore I have smitten mine hand att thy dishonest game. With their mouth they shew much love; butt their heart goeth after their covetuousnes. Her rulers doe love, with shame, give ye. For the transgressions of Israel, I will not turne away the punishment therof: bicause they sold the righteous for silver, and the poor for a pair of shoes. I know your manifold transgressions, and your mighty sins: they afflict the just; they take a bribe. The heads therof judge for reward; and the priests therof teach for hire: and the prophets therof divine for money: therefore shall Zion, for your sake, be plowed as a field, &c. That they may doe evill with both hands, earnestly; the prince asketh, and the judge asketh, for a reward. The best of them is as a bryar; now shall be their perplexity. Woe to him that coveteth an evill covetuousnes to his

¹ Pro. xv. 27.—Pro. xvii. 23.—Pro. xxviii. 16. and xxix. 4.—Eccles. vii. 7.

house; that he may sett his nest on high^k!" The soldiers were "for themselves", who tooke the large soms of money from the chiefe priests, and elders; and did as they were taught, told a lye for their money. The evangelist, St. Marke, among those evill things which defile the man, reckoneth covetuousnes. And St. Luke counsellis us; "take heed, and beware of covetuousnes; for a man's life consisteth not in the abundance of the things which he possesseth^l."

"Fœlix hoped, that money should have bin given him of Paul, that he might loose him: wherfore he sent for him the oftener, and communed with him^m. Butt Paul would not be guilty of that foule sin of bribery; nor adde fewell to the governor's fire of covetuousnes, which he rankes among the vilest of sins; and admonisheth, "lett it not be once named amongst you, as becommeth saints." And he calleth it idolatry; and he justifies himselfe: "neither att any time used we a cloake of covetuousnes, God is witnesⁿ!" To Timothy he saith, "the love of money is the root of all evill; which while some coveted after, they have erred from the faith, and pierced themselves thorough with many sorrowes:" and tells him that, "in the last dayes, men shall be lovers of themselves, covetuous, &c^o." He counselleth the hebrewes, and in them all christians: "lett your conversation be without covetuousnes, and be content with such things as ye have; for he hath said, I will never leave thee, nor forsake thee^p." St. Peter admonisheth the

^k Isai. i. 23.—Isai. v. 23.—Isai. xxxiii. 15.—Isai. lvii. 17. Jer. vi. 13. 15. Jer. viii. 10. 13. and li. 13. Ezek. xiii. 19. Ezek. xxii. 12.—Ezek. xxxiii. 31. Hos. iv. 18. Amos ii. 4. 6.—Am. v. xii.—Mic. iii. 11.—Mic. vii. 3. 4.—Hab. ii. 9.

^l Mat. xxviii. 12.—Mar. vii. 22.—Lu. xii. 15.

^m Acts xxiv. 26.

ⁿ Rom. i. 29.—Eph. v. 3.—Col. iii. 5.—1 Thes. ii. 5.

^o 1 Tim. vi. 10.—

2 Tim. iii. 2.

^p Heb. xiii. 5.

faithfull of those “who, through covetuousnes, shall with fained words make merchandize of you : whose judgement lingreth not, and their damnation slumbreth not. An heart they have, exercised with covetuous practises : cursed children ^a!” Such are all those who are “for themselves” in covetuousnes and bribery : and uppon this subject, plenty of instructions are in the holy story.

The son of Syrach affirmes, that “because of unrighteous dealings, injuries, and riches gott by deceit ; the kingdome is translated from one people to another : and that there is not a more wicked thing than a covetuous man ; for such a one setteth his own soul to sale ; because while he liveth, he casteth away his bowels.” That “presents, and gifts, blind the eyes of the wise ; and stop up his mouth, that he cannot reprove.” That “watching for riches consumeth the flesh ; and the care therof driveth away sleepe.” That “all bribery and injustice shall be blotted out : but true dealing shall indure for ever.”

The Græcians covetuousnes is reproved in the story of the Maccabees : and their philosopher was of opinion, that the magistrate is the keeper and administrator of the goods of the commonwealth, not for his private commodity*. When Menander came to Sparta, bringing with him a vast some of money ; they would not permit him to stay in the citty, least he might corrupt some of them. And when ambassadors came to Epaminondas, with great presents and gifts ; he invited them to dinner, where they had course meane

^a 2 Pet. ii. 3. 14. ^r Ecclesiasticus, x. 8. 9.—Eccles. xx. 29.—and 31. 1.—and 40. 12. • 2 Macc. x.—Arist. Pol. l. 1. Magistratus est custos, & administrator, communium bonorum, & non propriorum. It may be doubted whether, in strictness, this quotation authorises the excellent words in the text. Tully, in the Offices, quotes a similar sentiment from Plato, vid. l. 1. (M.)

fare, and bad wine. And bad the ambassadours carry back their presents to their masters: for he could content himselfe with such a condition as that was, rather than take rewards. They were very severe against corruption and bribery¹. So were the Romans; as appears by their law of refunding what was corruptly taken contrary to the Julian law. Seneca notes; that the philosopher, who perswaded the contempt of gold and silver, gave more in that, than if gold and silver had bin given by him².

Riches are called the baggage of virtue. The Roman word is better, "impedimenta:" for as the baggage is to an army, so are riches to virtue. It cannot be spared, nor left behind; butt it hindreth the march. Of great riches there is no reall use; except it be in the distribution: the rest is butt conceit.

The practise of Rabirius Posthumus gives us a good rule. "In the study and indeavours to gett wealth, he appeared to seeke not the prey of covetuousnes, butt the instrument of goodnes³." And thus may all publique officers, and counsellors, be "for themselves!" Whilest they avoid corruption, and covetuousnes, which in all nations have bin too much practised, butt alwayes with ignominy; and commonly have mett with deserved punishment.

Our knights, cittizens, and burgessees must not be "for themselves," so as to neglect their publique trust. What good they effect for the publique, is good to themselves as a part therof. And they have no power "for themselves" otherwise, than as involved in that good.

¹ Plut. Herodot. l. 3.

² Tacitus l. 1. Julius Paulus ad Leg. Juliam. repe-

tundarum. Erasmi. Rot. l. 3. Apoth.

³ Cicero. In studio rei amplificandæ appa-

rebat non avaritiæ prædam, sed instrumentum bonitati quærere.

C H A P. LXXXI

And the commonaltie.

THIS word "commonaltie" may leade me to some discourse of the antiquity of the commonaltie being represented, and having a share, in our publique councells. Which may be the more seasonable, bicause some of late have too much lessened, if not vilified, the honor of the house of commons; and indeavoured by their printed labours, to reproach, and lay low the power, priviledge, and foundation therof: not becomming a commoner; much lesse, a member of that honorable assembly. Yett are they pleased to agree, that 49. H. 3^a. writs issued forth to summon knights, cittizens, and burgessees to the parlement. The occasion is thus related. That king H. 3, after the ending of the barons warres, appointed, and ordeined: that all those earles, and barons of the realme, to whom the king himselfe should vouchsafe to send his writ of summons, should come to his parlement; and none else butt such as should be chosen by the voice of the burgessees, and freemen, by other writs of the king directed to them. That this was out of mere grace; not antient right, or custome. That this was the first writ; and was to summon, not to elect, the knights, cittizens, and burgessees, to the parlement^b.

^a 49. H. 3. rot. claus. m. 10. 11. dors.
Ibid. p. 373.

^b Prin, Plea for the lords, p. 182.—

This seemes to have bin taken out of Cambden, who saith he
 “ speaketh out of a writer of good antiquity ; that H. 3. after
 many troubles and enormous vexations, (between the king himselfe,
 and Simon of Montfort with other barons,) raised and after appeased,
 did decree, and ordeine : that all those earles, and barons, of the
 realme of England, unto whom the king himselfe vouchsafed to
 direct his writs of summons, should come unto his parlement ; and,
 none others^c.

Heere is no mention of writs of summons for the commons.
 Sir Robert Cotton hath it ; that the king governed by the councell
 of the peers only, who were the parlement : that the power of the
 lords, and great officers, as steward constable, and marshall, was
 transcendent, and grew fearfull to monarchy^d. Heeruppon king
 H. 3. when the daring earle of Leicester was slaine att the battle
 of Evesham ; by the deare experience himselfe had made att the
 parlament att Oxford in the 40 year of his reign, and the memory
 of the many streights his father was driven unto, especially att
 Runney Meade neere Stanes ; wisely began to lessen the strength,
 and power, of his great councell ; weakening that hand of power
 which they carryed, in the parlement, by commaunding the ser-
 vice of many knights, cittizens, and burgessees, in that councell.
 Now began (saith he) the frequent sending of writs to the com-
 mons, and their assents not only in money, charge, and making
 laws ; (for before, all ordinances passed by the king, and peers ;) butt
 their consents in judgements of all natures, whether civill, or
 criminall.

Selden is cited for this assertion of the late originall of the com-
 mons in 49. H. 3. in parlement : and he cites that passage before

^c Cambden Britan. Degrees of States in England, p. 169.
 huma, p. 345, 346.

^d Cottoni post-

noted out of Cambden, and saith this of it. “Butt that testimony of the old writer cited heere by him, (by Cambden,) perswades me not to thinke, any such kind of law was made so late, as about the end of H. 3. butt long before; and much sooner after the charter of king John. For in all occurrences, that I meet with, since that grand charter, I find no mention of any interest that those other tenants in chiefe, eo nomine, had in parlement; who doubtles were the persons excluded from it, whensoever any such law was made^e. That old author also; used by the learned Cambden, speakes of earles no otherwise than of barons, as if some like exclusion had bin of any of them also; than which nothing can be more adverse to the known trueth, both of that age, and all times; and even in that we have some character of the flightnes of his authority, whosoever he were: these things (saith he,) and what we have already noted, perswade me to give little credit to that relation.” Yett in another place he acknowledgeth; “the first writ that he finds, accompanied with the other circumstances of a summons to parlement, (as well for the commons, as the lords,) is in 49. H. 3^f.”

I shall not dispute whether in this year the first writ issued, for the election of knights, cittizens, and burgessees to serve in our parlements, after the forme continued unto our dayes: although since that time there have bin many variations, and alterations in the formes of those writs; some introduced by acts of parlement, and some by direction of our kings. Nor are there many writs of summons in our records, either for lords, or commons, before that time: I shall note some of them, in order of time as I come att them. It is well the poore commons are allowed 400 years esta-

^e 2. tit. hon. p. 712, 713.

^f 2. tit. hon. Seld. p. 717.

blishment, within two, of their interest and presence in our parlements: which is a fayre time; and the most envious, prejudiced persons against them, doe yett graunt this antiquity to them. But by graunting the same, and from the originall cited by them of the ordinance 48. H. 3. they doe not only lessen the honor, and authority, of the house of commons; but exceedingly derogate from that of the lords of parlement also; whose native right of having place, and vote, in all our publique councells, is acknowledged by that statute of Clarendon in H. 2. time; and in many of our lawes, and parlements, both before and since that time; and, by the constant exercise of that right in all ages. Yett this old author of Cambden's, who was never perused by any other person that I could heare of, affirmes: that none of the barons, earles and all included, were to come to parlement; butt such only, to whome the king should vouchsafe to direct his perticular writs of summons. Which ordinance is butt a very weake foundation to support the building of that great, and honorable house; and, no small diminution of the power, priviledge, honor, and antiquity therof. And if this ordinance be not authentique, as to the lords; it is as little authentique, as to the commons: the authority of it being the same for both; and justly, according to Selden's judgement. And the following authorities deserve no place in our beliefe.

Probably (as is said) in 49. H. 3. is the first writ of summons, neere our present forme, to be found now in our records. Yett there be some precedent writs of summons, of commoners, to parlement; and, many precedents, and authorities, (which will be remembred in their time :) wherby to me it seemes evident; that some of the commons, their deputies or representatives, had their place, and suffrage, generally in all times, in the publique councells of this nation. Such of them as occurre to me I shall sett downe, in

in their order ; and submit the conclusion theruppon to better judgements.

To begin neereſt to this time of 49. H. 3. In Sir Robert Cotton's judgement, the commons were in parlement 44. H. 3. when Adomar that proud prelat of Wincheſter, the king's halfe brother, was exiled by the joint conſent of the king, lords and "commons^s." Which ſhowes his opinion, that the commons were then in parlement. The pope wrote a letter for his recalling from baniſhment, becauſe he was a churchman, and ſo not liable to lay cenſures. The anſwear to this is: that "if the king and the greater men of the kingdome would have it ſo, yett the commonaltie would by no means indure his returne into Englandⁿ." The peers (ſaith our antiquary) ſubjoyn this anſweare, with their names ; and Petrus de Montford, "in the name of all the commonaltie," as ſpeaker or prolocutor of the commons: for (ſaith he) by this ſtile, Sir John Tiptoff, prolocutor, affirmeth under his armes the deed of intayle of the crown by king H. 4. for "all the commonsⁱ." Neither am I convinced that "the commonaltie," mentioned in this letter to the pope, is to be intended the commonaltie of the baronage only, and not the commonaltie of the people's representative ; or, of the diſtinction between "community, and commonaltie." The Latine word "communitas" is the ſame, and uſed for "commonaltie ;" and "the commonaltie" of the lords is not ſo congruous, as "the commonaltie represented:" nor doe the words of Matthew Paris make this diſtinction, or apply the word to the barons and lords only. They are "the commonaltie or community of the earles, nobles,

^s Cottoni poſthuma, p. 346.

ⁿ Lib. Sti. Albani. f. 207. Si dominus rex, et majores regni, hoc vellent; "communitas" tamen ipſius ingreſſum in Angliam nullatenus ſuſtinerent.

ⁱ Vice totius communitatis. Chart. orig. ſub ſigill. an^o. 8. H. 4. apud Cotton.

great men and others of the kingdome of England^k." So it seemes there were others besides earls, nobles, and great men, signified by the word "communitas;" which were probably of the commons themselves; and the four knights whom they sent with this message, who are called learned, eloquent, and faithfull, may not improbably have bin members of that assembly.

There are uppon record, to goe a little higher, writs of summons in 38. H. 3^l. which, (the objectors against the antiquity of the commons in parlement doe confesse,) seeme somewhat like a summons of knights to parlement; and is so cleerly: though, in the forme, varying from the later writs. Which was no unusuall thing in the writts of summons, both of lords, and commons, in those times and since, to admit of variations, and fundry alterations.

A little before this, in 32. H. 3. a parlement was summoned by the king; wherein are reckoned, (with the bishops, earles, and barons, knights, abbots, priors, clerkes, &c.) "in a great multitude^m." So heere were knights, who are commoners, in this parlement. And in the beginning of this king's reigne, in his tenth year, Otto the pope's legat required the restitution of Falcaus from banishment; the king answeres: that "for manifest treason he was banished out of England, by all the clergy, and people of England; by the judgement of his courtⁿ." This is a full evidence, that there were then deputies of the people in parlement: else it could not have bin stiled by the king "the judgement of his court, by all the clergy, and people of the kingdome;" which cannot be otherwise intended than by those who represented "all the clergy, and people."

^k Math. Paris. p. 958. Addit. 215. Communitas comitum, procerum, magnatum, aliorumque regni Angliæ.

^l 38. H. 3. Rot. claus. m. 13. dors.

^m Math. Paris. p. 743. 48.

ⁿ Math. Paris. an^o. 1225. p. 325. 50. Propter prodicionem manifestam ab omni clero, et populo Angliæ, per judicium curiæ suæ.—

And this explaines that expreffion of our historian a little before, when he calls the fame parlement; “a conference of the king with his great men^o.” In the beginning of the fame year, he mentions another parlement, wherein a 15th was graunted: and there (he faith) “were present the clergy, and people, with the great men of the realme^p.” And two years before this, in the patent rolles, is a writ of fummons for knights to come to parlement^q. Severall other passages in this king’s reigne, to be mett with in his story, testify; that, before the 49 year of his reigne, there were commoners, or deputies of the commons, in their parlements.

In his father’s time, the great charter of liberties was graunted att Runny Meade; the king, and the barons, being in opposite armes. And this meeting is called a parlement; and therin a 15th is given to the king by the prelats, earls, barons, knights, and freeholders^r: which shoves the commons were then admitted. Butt in this king’s time, there fell out a great alteration touching the members of parlement; which judicious Selden thus collects^s. “By the stories of the time of, and about, the interdict, (which had continued about 6 years, and ended within lesse than a year before the parlement wherein the great charter was made;) uppon the many differences and quarrels between the king, and many of his barons; divers baronies did escheate to the crown, either by attainders, or otherwise, according to the lawes of the times: which, being in the king’s hands, were partly graunted to others; and partly retained as ready rewards for such as the king would make of his part, by giving them such eschetes, or any partes of them, to hold of him in chiefe; as the antient barons from whom they escheated

^o P. 324. Colloquium regis cum magnatibus suis.
clero, et populo, cum magnatibus regionis.

^p P. 323. Praesentibus

^q 8. H. 3. Rot. pat. pt. 3. m. 4. dors.

^r Mag. Chart. c. 38.

^s 2. Tit. hon. Seld. p. 710.

had done. And of those escheated baronies there is expresse mention, in the great charter of king John, and H. 3¹. Divers barons also were perhaps so decayed in their estates, that they were not able, honorably, any longer to support their titles. Now the other barons which were of antient foundation and bloud, or of great renew, (or the majores barones,) foreseeing, it seemes, how their dignity and power might suffer much diminution, if the new tenants in chiefe (or patentees of those escheated baronies,) and the rest that were decayed, being all barons by tenure according to the lawes of that age, should have equality with them; and be indifferently barons of the kingdome, every way, as they were: procured, (so we may justly thinke,) a law, in some of those parlements that preceded that grand charter, by which themselves only should be thereafter properly stiled, and be barons; and the rest, tenants in chiefe only, or knights or milites. And therefore the addition of "majores" was given to the antient, and more powerfull barons; and of "minores" to those tenants in chiefe: and their possessions not stiled baronies, butt knights fees.---And those greater barons were summoned, to parlement, by severall writs directed to them; and the rest, (whither they had the name of lesser barons, or not, I know not,) that held in chiefe were summoned also; not by severall writs, butt by one generall summons, given by the sherife, in their severall counties. What speciall kind of place, and voice, (different from the other,) they had that were thus summoned, by the sherife, appears not: butt that thus the greater barons, and the rest of the tenants in chiefe, were then distinguished expressely, appears in the great charter of king John; where, among the liberties, one is to have "the common councell of the kingdome" to asseffe aids, otherwise than in 3 cases; that is, to make the eldest son a knight, to marry the eldest daughter, and aid of ransome. The

¹ Mag. Chart. c. 31.

charter goes on, and “to asseſſe eſcuage---we ſhall cauſe to be ſummoned the arch biſhops, biſhops, abbots, earles, and the greater barons of the realme, ſeverally, by our letters: and beſides we ſhall cauſe to be ſummoned, in generall, by our ſherifs and bailifs, all others (or all thoſe) who hold of us in chiefe,” att a certain day, att the end of 40 dayes at leaſt; and, att a certain place;---and the buiſnes to proceed according to the counſell of thoſe who ſhall be preſent^w.”

“Before this charter was made, probably by the law of ſome other parlement, it appeared who theſe “greater” barons were; and who, and of what nature, the other tenants in chiefe were;” probably butt in the capacity of commons. Who “being by theſe differences in the forme of their ſummons, in their titles, poſſeſſions and reliefs, made ſo much leſſe in honor than the greater barons; it was the leſſe difficult for thoſe greater barons to procure a law, to exclude the reſt wholly, att length, from having any intereſt in the parlements of that time. And to this purpoſe doubtleſſe ſome law did afterwards paſſe, wherby it was enacted: that none ſhould come to the parlement, under that name, or the name of barons, butt ſuch only as ſhould have ſeverall writs of ſummons directed to them.” And although there be neither rolle, nor hiftorie, that expreſſely mentions thoſe lawes; yett they might well be, and

^w Math. Paris. p. 257.—Et de ſcutagio aſſidendo—faciemus ſummoneri archiepiſcopos, epiſcopos, abbates, comites et “majores” barones regni, ſigillatim, per literas noſtras: et præterea “faciemus ſummoneri in generali, per vicecomites & ballivos noſtros, omnes alios qui in capite tenent de nobis, &c.” In the original is this additional circumſtance, not tranſlated by our author. “& in omnibus literis ſummonitionis illius, cauſam ſummonitionis exprimemus; & ſic factâ ſummunitione,” negotium, &c. Vid. Selden Oper. (Vol. iii. p. 737. Edit. 1726;) & Blackſton, Magn. Chart. p. 14. (M.)

be lost, in the common histories of those obscure times; and all the rolles of parlement, of those times, are lost.

Some conjecture, that both the "greater", and "lesser barons" or tenants in chiefe, were in parlement after the manner of the chiefe of the fathers, or of the families of the Hebrewes: and that, uppon the exclusion of the lesser barons from parlement in that right of their tenure, that summons issued for the election of knights, cittizens, and burgessees to parlement. Butt I cannot subscribe heerunto; and the lesse, bicause there appears to me some footsteppes of knights, cittizens, and burgessees, att least of deputies of the commons in parlement, before this time. As in the 15th year of this king's reigne we find a writ to the sherife, to summon "four knights of his countey;" and the like to the rest of the sherifs; to come to Oxford, "to conferre with the king^x:" which Selden calles "a kind of parlement." And such a kind of writ is also uppon record, in the sixt year of this king: in which record are mentioned "bishops, earles, barons, and all our faithfull people of England; by whose assent, lawes were then made^y."

Sir Henry Spelman in the remaining part of his Glossary, not yett printed, (butt communicated to me by his son, whose civility and learning addes honor to his family and profession,) holds, that this "king John gave the cleere forme, and calling (I cannot say of the parlement, for that name did not then appeare, butt) of the common councell of the kingdome;" as by his charter is manifested^z.

^x 15. Jo. Rs. rot. claus. pt. 2. m. 7. dorso. 4 discretos milites, de comitatu tuo, ad loquendum nobiscum. ^y 6. Jo. Regis rot. claus. m. 3. dors. & rot. pat. m. 2. Assensu archiepisc. &c. et omnium fidelium nostrorum Angliæ. ^z Johannes rex, haud dicam parliamenti, (nam hoc nomen non tum emicuit) sed communis concilii regni formam, et coactionem, perspicuam dedit.

Butt if I have stayed too long in this time; it is bicause of the very great alteration then happening. I shall soone passe over his brother's reigne, R. 1, who was most of his time abroad. Yett I find the charter of priviledges, and the manner of his reception when he came into England, and his intertainment heere graunted to the king of Scots, was in the beginning of his reigne by the counsell of the bishops, and many others as well clerkes, as laymen; naming neither earles, nor barons^a, butt many, of that publique councell. And the expresseion before, of a parlement "with the whole clergy, and all the sect of laymen^b," intimates deputies both of the clergy, and laity; for all of them never were, nor could be, present. And it is agreed, that proctors, or deputies, of the clergy were in those parlements: and the like of the laity is not improbable.

In the before noted 5th year of R. 1. when the king of Scotts required of him the dignities, and honors, which his prædecessors had in England; and, the counties of Northumberland, Cumberland, Westmorland, and Lancashire: "the king answered him;" that he would satisfy him by the councell of his earles, and barons^c. And presently after, "the king of England taking councell with deliberation, with his bishops, and earles, and barons:" he graunted the charter, before remembred, to the king of Scotland^d. And before this, when the Scottish king came into England, it is said; that the archbishop "of Yorke, together with the barons of Yorkshire," and the sherife of Yorke, by the king's commaund mett

^a Rog. Houeden. p. 737. an^o. 5. R. 1.
et tota secta laicali.

^c Rog. Houeden, p. 737.—Rex respondit, se satisfacturum ei per consilium comitum, et baronum suorum.

^b Eulogium MS. Cum toto clero
^d Rex Angliæ habito cum episcopis, et comitibus, & baronibus suis, cum deliberatione, consilio.

the Scott's king att the river Twede; giving him due honor, and conducting him safely to king Richard^e.

This passage, of the barons of Yorkshire, seemes to explaine the word "barons to meane the freeholders," or principal gentlemen of Yorkshire: who accompanied the bishop, to meet the king of Scotts. And in this sence the word "barones" was frequently used in those times. And perhaps, there, barons were the bishops free tenants, who waited uppon their lord on this occasion. And it was usuall to call some chiefe tenants of earles, and nobles, in that time "barons:" so the earle of Chester had his barons; the lords marchers, and other lords, had their barons under them. So had the abbot of Ramsey; of whom it is sayd, that "the barons, &c. of the whole abbey came to him^f." And, for this use of the word "barones," there is expresse testimony in Hoveden; who reports the order of levying the aide of hydage, given to the king. That the collectors should cause to come before them, "the stewards of the barons of that countey, &c." and that "every baron, with the sherife, shall make distresses uppon his tenants^g." Which expressions frequent in that, and other places, shew the acceptation of the word "barones for freeholders," or tenants of the king, and lords of mannors. And thus (saith Selden) were there, in those times, three sorts of barons by dominion and jurisdiction; "the barons of the king, whose baronies were capitales;" the barons of subjects, holding not of the king butt by a mesnaltie, (and both parliamentary, if possessing 13 knights fees, and a third part;) butt a third ranke was of such as were lords of mannors, butt not of so large

^e Hoveden, p. 662. Eboracensis electus, una cum baronibus eboracensis scyræ, &c.

^f Lib. Abbath. de Ramsey, sect. 224.

^g 9. R. 1. an^o. 1199. p. 778, 779.—

Seneschallos baronum illius comitatus. Quilibet baro cum vice comite faceret distractiones super homines suos.

possessions, or revenue^h. Out of this may be understood why, and in what sence, “the baronage of England, the king and his baronage, and without the assent of his barons, and of his baronage, or his barnageⁱ,” so often occurre in our old stories; taken as well for the king and the whole state sometimes, as for the greater nobilitie. And in that kind, by the name of “baronie,” one antiently speakes the whole nobilitie, both greater, and lesſer.

The priviledge of regalie
Was ſafe, and all the baronie
Worſhipt was in his eſtate^k.

And an old romant of the French

“Of courteſie, and of the bernage,
He hath enough in his courage^l.”

Where bernage, for baronage, is taken (ſaith Fauchet) for nobleſſe. Butt ſometimes with us, the king and his baronage is for the king, and all his ſubjects; or, the whole parlement repreſenting them. And ſo it comes from baron, as it interprets a man, or tenant: as if you ſhould ſay; “the king and his barons,” that is, “the king and his men,” or tenants^m.

Out of this diſcourſe is underſtood alſo, why every lord of a man- nor hath his court baron; and why our plea, in the common lawe, of “out of his fee,” is expreſt in antient time, “out of your baronie;” and how a tenure by baronie might then be of a ſubject. As alſo, what it is “to hold by barony; and, by part of a baronie:”

^h 2. tit. hon. p. 277.—Barones regis capitales.

ⁱ Baronagium Angliæ—

Rex et baronagium ſuum—Sine aſſenſu baronum ſuorum, et baronagii, vel baronagii ſui.

^k Gower. prolog. in confeſſ. Amant.

^l Chez. Cl. & Fauchet,

l. 2. c. 5. De courtoife, et de bernage, ot il aſſez en ſon courage.

^m Rex et ba-

rones ſui—rex et homines ſui.

and what the demaunding of a baronie, by writ, in our year bookes is; wherof examples are to be found in fundry of themⁿ.

Lambard is of the same opinion, that both the nobilitie, and commonaltie of the realme, were meant under these words; the barons of the realme. And the rather (saith he;) bicause that speech is accompanied with the words "common councell;" by the which all our antient writs, that be grounded uppon old statutes, doe signify the parlement^o: and for that also Mathew Paris doth use the words, "common assent of the baronage;" when he intendeth to signify a just parlement^p.

If then the words, "by the counsell of our barons," and "baronage," are taken for the king, and all his subjects; or the whole parlement representing them; and that under those words are meant "the nobilitie and commonaltie" also: we may from thence be furnished with an argument, that by those often expreffions in our old historians are included some of the commons, or their deputies, under those termes of "the barons, and baronage of England;" and that it did not comprehend the lords, or greater barons only, butt some of the ranke of the commonaltie also. And this is also noted to be consonant to the usages of other cuntryes: as in Fraunce, Germany, and Italy, the counts and great governors had their barons holding of them; as of the earle of Flanders, and among the Burgundians. And by a law, that "after the death of a baron, or

ⁿ Hors de son fee; hors de vostre baronie m. 5. E. 2. f. 66. MS. Int. temp. cas. Waton and Cowick. West. 2. c. 46.—23. E. 3. f. 11. cas. 9. tenere per baroniam, et per partem baroniæ. 1. E. 3. f. 9. Loveday's Affis. 18. E. 2. Affis. 328. 2. E. 3. f. 6.

^o Lamb. Archeion. p. 262.

^p Communis assensus baronagii.

knight,

knight, who held a barony, or fee, of another earle or baron, &c.^a” which sheweth, that in those countries there were barons, or tenants, holding baronies even of other barons. And the Germans att this day render the word “baron, by freyen,” that is, freemen; and “freyherren,” that is, free lords. The like is in Sweden, where a baron is called “friiheere,” that is, a freeman, or free lord: and in their latin expreffions, and instruments, they alwayes render it “liber baro,” free baron, in such a place, &c.

Whilest this king R. 1: was in the holy land, a parlement was held by his brother John earle of Moreton; in which, (as Roger Houeden relates it,) “it pleased John the king’s brother, and all the bishops, and earles, and barons of the kingdome, and cittizens of London,” that the chancellor should be deposed: and they deposed him accordingly; which Mathew Paris relates to be done “communium assensu,” by assent of the commons, or commonaltie; which implyes others besides lords to be in the councell, rather than the community of the lords. I confesse I know not how more properly to translate “communium assensu,” than “by assent of the commons;” and I am sure it hath that sence in our latter records of parlement, in latin. And as there are related to have bin cittizens of London in this councell; it is not uncapable of credit, that there were then also cittizens of other great cittyes who were equally concerned, with London, in the oppressions they suffered; and, in the deposing of this great officer and tyrant, the chancelor, legat, and vice roy of the kingdome: wherto also the consent of the

^a Spelman Glossar. verbo Baronēs.—Aimoino adjectus l. 5. c. 11.—Constit. ficul. l. 3. tit. 22. Post mortem baronis, vel militis, qui a comite vel barone alio baroniam aliquam, vel feudum, tenuerit, &c. ^r Rog. Houed. p. 702. Placuit Johanni fratri regis, et omnibus episcopis, et comitibus, et baronibus regni, et civibus Londoniarum. ^s Mat. Paris, p. 166.

king's brother, of the bishops, earles, and barons, (which includes commons, and lords likewise,) was given.

In the time of this king's father 34. H. 2. the king being returned into England "did assemble a great councell of bishops, abbotts, earles, and barons, and of many others as well clerkes, as laymen". Surely there could not be many other clerkes, besides bishops, and abbots; butt they must be of an inferiour degree of the clergy, and of the ranke of the commonaltie: perhappes proctors, or deputies of the inferiour clergy, which we find afterwards in parlement often mentioned. And the "many others," besides earles and barons, in that parlement, can hardly be expounded of others butt such as were inferior to barons, and of the commonaltie, or "deputies of the commons;" and this, not in a strained sence. And that they were not there as officers to be imployed only for collecting the tax, (as some doe suppose,) appears; in that the king caused the capitula, then enacted, to be recited before them, as parties therunto.

In 32. H. 2. "the clergy and people were called to councell" at Clerkenwell, about the great buisnes, whether he should accept of the kingdome of Jerusaleme: "by universall counsell" he was dissuaded from it". Houeden describes this councell to consist of the patriarke who was sent about the buisnes, and the bishops, abbots, earles, and barons; whom Paris calles the clergy, and people, of the kingdome. And surely the word "people" may admit a reasonable intendment, of some of the commonaltie to be in that councell.

^t Mat. Paris. p. 143. an^o. 1188. Houeden, p. 642. Magnum congregavit concilium episcoporum, abbatum, comitum et baronum, et aliorum multorum tam clericorum, quam laicorum.

^u Mat. Paris, p. 143. an^o. 1185. Convocato clero ac populo regni.—concilio universo, &c.

Another great buifnes of this king was the divifion of England into circuits; which was done by the counfell of the bishops, earles, and barons, which includes the commons^w.

In the 23 year of his reigne, he heard the controversy as arbitrator between the kings of Caſtile and of Navarre; and gave his judgement therin by the advice, (ſaith Mat. Paris,) of the bishops, earles, and barons^x. H. calles it “a generall counsell^y” and mentions in it, the bishops, abbots, priors, earles, and barons of England; all which he afterwards comprehends under the name of “his barons,” which word included both the ſpiritualtie and temporaltie, both the lords and commons there preſent.

To the parlement of Northampton 11. H. 2. (ſaith an antient writer of the life of archbiſhop Becket) the king, “determining to celebrate a ſolemne counsell, cauſed to be ſummoned all who held of him in chiefe^z,” who were ſome of them doubtles of the degree of commoners. Matthew Paris calles them, only “the nobles, and bishops^a,” but Houeden mentions the king’s ſon, the arch bishops, bishops, earles, and barons of the kingdome, “by common counsell of all^b.”

Fitz Stephen ſaith: “all, the bishops, earles, and barons of England counſelling it;” the judgement was given againſt the arch biſhop, Becket, before noted^c.

Uppon this, and the like expreſſions, ſome have apprehended that all the barons, or all the tenants in chiefe of England, being a

^w Houeden. p. 590. 26. H. 2.

^x Paris. ann^o. 1176. 23. H. 2.

^y Houeden. Generale concilium.

^z Anonym. MS. ann^o. 1165. Solenne

ſtatuens celebrare concilium, omnes qui de rege tenebant in capite mandari fecit.

^a Mat. Paris. p. 102. ann^o. 1164. Proceres et epiſcopi.

^b Houeden. p. 548.

communi omnium concilio.

^c Stephanides MS. de vita et paſſione. Th. Cant.

Conſulentibus epiſcopis, comitibus, et baronibus Angliæ omnibus.

very great number (divers thousands of them,) could not possibly be all present in the councell: butt that in each countrey they then elected two or more of those barons, or tenants in chiefe, to represent and serve for all the barons, or freeholders, of each countrey; which came afterwards to the name, and present way of election of the knights of shires, by the freeholders of each countrey. Butt of this conjecture it is not easy to determine any thing certainly, where so many ages, and accidents, have obscured the clere knowledge of it.

In 10. H. 2. was the parlement held att Clarendon; "there being present the arch bishops, bishops, abbots, priors, earles, barons, and nobles of the kingdome^d." Henry Huntingdon to the same effect. Butt Hoveden more fully, though more shortly, saith; that the king "assembled the clergy, and people, of the kingdome, att Clarendune," &c^e. Which word "people" must need imply some of the commons, or representing them, in that councell. Fitz Stephens calles it "a generall counsell:" and in *Quadrilogus*, and *Goldastus*, to the bishops, earles, and barons are added "the more noble, and elders, of the kingdome^f," besides the barons; which is an argument of commons then in that councell.

In king Stephens 19th year, the award was made between him and Henry Fitzempresse, "in the assembly of the bishops, and other chiefe men of the realme^g;" which cleerly comprehended the earles, and barons, and with them not improbably commons also. In his entrance to the crowne (saith our author), contrary to his oath to

^d Math. Paris. p. 100. ann^o. 1164. presentibus archiepisc. &c. comitibus, baronibus, et proceribus regni.

^e Rog. Houeden. p. 493. congregato clero, et populo regni, apud Clarendune.

^f De vit. Th. Cant. Constit. imp. tom. 3. p. 347. nobiliores, et antiquiores regni.

^g Paris. p. 86. ann^o. 1153. In conventu episcoporum, et aliorum optimatum regni.

the Empresse, “having assembled att London the great men of the kingdome;” the archbishop who had also sworne to the Empresse, and “all the prelates earles and barons”, who had done the like, crowned Stephen king: which some hold to have bin a parlement^h.

King H. 1. in the 24th year of his reigne, as is cited out of the chronicle of Peterburgh, “called a parlement” att Londonⁱ; which is not mentioned in our historians. Butt this word “parliamentum” is some ground for Polydore’s opinion, which followes, and is uppon the parlement att Salisbury 17. H. 1. of which he saith: that the king “summoned to Salisbury as well the princes of the priests, as of the rest of the people;” where lawes were made for confirming the state of the kingdome^k. “And this (saith he) I have positively to say, that before these times, the kings did not use butt very rarely, to make assemblies of the people for consultation’s sake. So that from Henry that institution may rightly be said to proceed;” which was fixed uppon such deepe rootes, that it continued alwayes to this present. “And least councell should be hindered by the judgement of the unskilfull multitude of the vulgar, whose property is not to be wise; it was provided from the beginning, by a certain law, who of the company of priests, and who and how many of the rest of the people, should be called to councell.” Then he mentions the distinct sitting of the houses. “The king, prælates, princes, and abbots, doe meete (saith he) in one place, and there doe sitt together: and the procurators, or deputies, of the cittizens

^h Paris. p. 74. Congregatis Londonias regni magnatibus.—Omnes tam præfules, quam comites, et barones.

Convocavit parliamentum.

ⁱ Ex chronic. de Peterburgh. Co. epist. 9. rep.

^k Polyd. Virgil. l. 11. p. 187. Tam sacerdotum, quam reliqui populi principes, Sarisberiam convocavit.

and people, in another place neere unto it¹ ;” where they debate among themselves of matters to be done.

Speed followes this author, and sayth ; that this king layd heere the first foundation of our high court of parlement. For (saith he) the english kings, in former times, ordered the affayres of the commonwealth by their edicts, by their officers, and by the governors of every countrey ; and seldome had the joint advice of their people, saving only att the beginning of their government, and in time of warres : wheras now the subject, best understanding his own grievances, hath both liberty in choice of their knights, and burgeses ; and also, free voice to complaine therof, in that honorable assembly^m. Tate, Agar, Holinshed, and judge Dodderidge, (whose learning was not inferior to any opposers of the honor, and antiquity, of the house of commons,) are of the same judgement : that knights, cittizens, and burgeses, were in this parlement of 16. H. 1. or 17. H. 1. as some place the time of itⁿ. Butt the contrary is confidently asserted ; and that no knights, cittizens or burgeses were then elected to parlement by the king’s writs. It followes not therefore that they, or some deputies of the commons, (though not elected by the like formes of writs as now,) were not then in parlement : no more than it followes, that bicause the lords were not then summoned by the king’s writs to parlement, that therefore there were no lords then in parlement ; of which opinion, I suppose no man is, nor he who thinkes so meanly of the commons. Against

¹ At illud appositè dicere habeo, reges ante hæc tempora non consuevisse populi conventum, consultandi causâ, nisi perrarò, facere. Adeo ut ab Henrico id institutum jure manasse dici possit.—Ac ne imperita vulgi multitudinis, cujus proprium est nihil sapere, judicio consilium impediretur ; certâ lege exceptum fuit, à principio, qui ex sacerdotum cætu, quive quotve ex reliquo populo, vocari deberent ad concilium.—Rex, pontifices, principes, et abbates in unum conveniunt locum, ibique confident : at procuratores civium, populique, in alterum proximum.

^m Speed, hist. p. 457.

ⁿ Ann^o. 1116. Holinshed. p. 38.—Dodderidge, Antiquity of parlements. p. 18. 19. 20. 40. 80. 85. 87.

whose opinion are the authors before mentioned. Ager and Tate, learned lawyers; Dodderidge, Whitelocke, and Cooke, learned judges; the manuscript of Canterbury, and other not despicable authorities: against whose opinion I should hardly presume to preferre my own, if I differed from them; but rather suspect my own want of knowledge, than their's. Yett this I must with submission say; that I am not convinced, that the beginning of the admission of commons was in this parlement: bicause I apprehend sufficient testimony of their being in parlements, before this time.

Edmerus stiles this "an assembly of bishops, abbots, and princes of the whole kingdome." Houeden names "the earles, and barons, of all England^p." Simon of Durham stiles them "an assembly of the chiefe men, and barons, of all England^q." And we find it often expressed in his reigne, "by the common councell of the barons;" by the counsell of the earles, and barons; by the assent of all the bishops, and barons. And what was then understood by the word "barones" we find in the lawes of this king, where it is said: "the king's judges are the barons of the counties, who have free lands therein; by whom the causes of all persons ought to be determined interchangeably." Which shoves, that by barones they meant "freeholders" of the countey, who att this day are judges of the countey court^r.

The like is in the antient writs of this king, in the booke of Ramsey. "Henry king of England, to the bishop of Lincolne, and to the justices, and sherife, and barons, and all his faithfull

^o Hist. novor. l. 5. p. 117.

^p P. 473.

^q De gest. reg. Angl. col.

237.

^r Paris. p. 53. communi concilio baronum regni.—Eadmerus l. 4. p. 94. 95.—Simon Dunel. col. 231.—Houed. p. 272. and p. 10.—Eadmer. p. 101. 102. 103.—Antiq. eccles. Brit. p. 127.—Leg. H. 1. c. 30.—Regis judices sunt barones comitatus, qui liberas in eis terras habent; per quos debent causæ singulorum, alterna prosecutione, tractari.

French and English of Huntendonshire greeting^s." And in another place; "to Gilbert the sherife, and to all his barons, and faithfull French and English of Huntendonshire: and to the abbot of St. Edm. and to his ministers of Suthfolc, and to all his barons^s." Where the use and place of the word "barones," after the sherif, and after the king's ministers, shoves it to be meant of freeholders. So doth this king's writ directed: "to all the barons of the abbey of Abingdon," commaunding them to keepe watch and ward^s." By which, and severall other passages of the like nature, it appears: that in this time the word "barones" was used for "tenants, and freeholders;" and may be rationally interpreted, in the relations of the parlements under this king, to comprehend "commons," as well as the majores barones. The historians uppon the same occasion doe also use the words "princes of all the kingdome; primates and magnates of the king; procures regni, nobiles:" all which are used according to the fancy of the historians, and to expresse the chiefe men of the kingdome who were in those councells; and may admit some of the commons in the comprehension of them. So may also the expressions of the same authors, of "the generall councell, the assembly of all---It pleased them in common---The assembly of the whole kingdome;" and the like^w: which could not properly have bin used if none had bin present, and representing 100 times the greatest part of the kingdome, which is the commonaltie. Att his coronation "he assembled, in councell, all the clergy, and people of England, att London," where he graunted

^s Lib. Rams. sect. 312. H. Rex Anglorum, episcopo Lincoln. et justiciariis, et vice comiti, et baronibus, et omnibus fidelibus suis, Francis et Anglis, salutem.

^t Sect. 320. sect. 332.

^u Lib. Abbath. de Abingdon. H. Rex Angliæ, om-

nibus baronibus abbathiæ de Abingdune, salutem.

^w Eadmerus l. 3. p. 67.

Malmesbury l. 1. p. 228. Eadmer. l. 4. p. 91. 92. Math. West. Simon Dunelm. &c.—Eadmerus l. 5. p. 114. 115. 116. generale concilium, conventus omnium; placuit in communi. ib. p. 118. 126. totius regni conventum, &c.

his charter of liberties : and useth the words afterwards of “ the clergy, and great men ; and, by the common counsell of the barons of England *.” Wherby he who seekes to derogate, from the commons, makes this interpretation : that the words first used, of the “ clergy and people of England,” are heere explained to meane only “ the lords spirituall, and temporall,” and not any of the commons ; bicause the words “ magnates and barones” are used for the same as “ clerus and populus” before were. Wheras, in a much more proper interpretation, it is obvious ; that the authors, by the words “ magnates and barones,” meant to include what they had before expressed “ the clergy, and the people ;” “ all the people ;” which can in no reasonable construction be restrained to the lords spirituall and temporall only : butt “ all the people” must be understood, “ the deputies of all the people,” from all parts of the kingdome, sent unto their publique counsell. It cannot be ingenuously urged, that populus signifies only the lords ; especially “ universus” being added to it. Butt “ all the people” may well be taken to signify both “ the lords, and deputies of the commons”, who may, properly enough, be stiled “ principes, procures, magnates, and primates ;” great men, and chiefe men of the kingdome ; when they sitt in parlement.

I shall not be so long detained in the reigne of the next king, his brother William Rufus ; who was too neere the time called the conquest, to have much to doe in civill counsell. About the ninth year of his reign, the king, being to act concerning the state of the kingdome, called together to one place the bishops, abbots, and all the nobles of the realme^y. And Florence of Worcester speakes of “ the judgement of the barons,” under this king. And in the

* Paris. 52, 53. Congregato Londoniis clero Angliæ, et populo universo. Clero, et magnatibus.—Communi consilio baronum regni.

^y Eadmer. Hist. nov. l. 2.

seven year of this king's reigne, about the buisnes of Anselme, the bishops, abbots, and all the princes of the kingdome were called together: which was a parlement. And in the generall acceptation of those termes, "barones, and principes" might comprehend all degrees^z.

That the word "magnates" beares the meaning of "commoners," as well as lords, is expounded by a parlement it selfe, in the præamble to the statute Staple; wherein is said. "Wheras good deliberation had with the prelates, dukes, earles, barons, and great men of the counties; that is to say, of every countey one, for all the countey, &c."^a So that the word "magnates" here is expressely used for "commoners, knights of shires;" and may therefore beare the like construction in other times, and places. So in a plea rolle, in the tower, a law is mentioned made by the king, bishops, earles, "barons, and other great men," and the king's counsell; where magnates are reckoned besides, and after, barons^b.

The like may be said for the word "nobiles," and other frequent appellations of parliamentary members. Butt I must hasten to king W. 1. whom our chroniclers, from the flattering monkes, stile the conquerour: though he never pretended to be conqueror of England, butt of the usurper Harold; nor did ever stile himselfe conqueror, as hath bin noted. And although "armes doe silence lawes^c;" yett, even in his time, we have memorialls of parlements held by him. One appears in a case of our law booke, in E. 3. time, uppon a prohibition against the bishop of Norwich, for visiting the abbey of St. Edmond's Bury; which was pleaded to be exempt "by an act of parlement, in the time of William the Con-

^z Flor. Wigorn. ann^o. 1093. Eadmerus hist. nov. p. 26. & William Malmesbury.

^a Stat. Staple 27. E. 3. præfat.

^b Placit. 18. H. 3. rot. 15. apud Westm.

Baronibus, et aliis magnatibus, &c.

^c Inter arma silent leges.

querour,

querour, made by the king, and by the archbishop of Canterbury, and by all the rest of the bishops of the land, earles, and barons." Which was allowed by the judges for an act of parlement; and judgement given accordingly: which (saith Coke) they neither could, nor would have done, if it had bin commanded by the sole will of the conqueror; and had not bin established according to the due forme, and rules, of the common lawe^d.

By the word "barons" that others, besides the greater barons, were meant, appears by the use of the word in his time, and after, for freeholders; and for principall men of townes, citties, and boroughs. That the word was brought in with the Normans, is the opinion of our antiquaries^e. And the application of it to chiefe men of citties, and boroughs, appears in the charter of this king to London, before noted; where he calles the men of London "burgh warn," or "burgh barons of London." So the Latin calles them "barones London." So is Math. Paris, "the Londoners (saith he) whom, for the dignity of the citty, and the antiquity of the cittyzens, we use to call barons^f." And in the booke of Ramsey, before noted, is a writ directed to Eustachius "the sherife, and to all the barons of London^g." And the cittizens are often expressed by the name of "the barons" of London in our elder historians. And Ingulphus gives them the title of "Heroes of London." The same expression is given of "barons of Yorke, of Chester, of Warwick, of Feverham;" and of severall other

^d 21. E. 3. f. 60.—En temps W. Conquerour à son parlement, à certain jour tenus, fuit ordeign per le roy, et per l'archevesque de Canterburie, et per tous les autres evesques de la terre, countees, et barons. Ep. 9. rep.

^e 2. tit. hon. Seld. p. 687. ^f Paris. in H. 3. Londinenses quos, propter civitatis dignitatem, et civium antiquitatem, barones consuevimus appellare.

^g Lib. Rams. sect. 323. Vice comiti, et omnibus baronibus de London.—Hist. Croyl. p. 877. Heroes londonenses.—Spelman Glossar. verbo "barones."

townes. And att this day that appellation continues to the barons of the cinque ports, whose deputies in parlement are still called the "barons of the cinque ports." And Sir Edward Hoby being sent from the house of commons, with a message to the lords, told them; that he was commaunded by the knights, cittizens, burgesſes, and "barons of the house of commons," to acquaint their lordships, &c. att which some of the lords taking exception, it was justified from the barons of the cinque ports being of their number^b. Some have given them the name of "earles of the cinque ports," resembled to that of the roman office of "the count of the port of Rome^c." And for that name of "barons," in other countries, for "cittizens, and burgesſes," Flavius Blondus saith; "the chiefe men of the citty, whom now we call barons, they did then call captains^k." And an other italian author saith, that a "baron signifies the principall men of the citty," the *proceres*^l. So Loiseus saith: "in France those whom we now call burgesſes of Bourges were formerly called barons." So that both with us, and in other countreys, the word "barones" was used, in elder times, to signify knights, freeholders, cittizens, and burgesſes; those of the ranke of the commonaltie: as it was more peculiarly, and afterwards, used to expresse those of the greater nobility.

About the fift year of W. 1. he held a parlement att Pinnenden; which Eadmerus stiles "the assembly of the princes:" wherein the archbishop Lanfrank, "by the award and judgement of all^m, recovered lands against Odo earle of Kent. Florence of Worcester

^b *Comites quinque portuum.*
^c *Cassiodor var. l. 7. c. 9. Dignitatem comitivæ portus rom.*

^k *L. 5. decad. 2. Primarii urbis, quos nunc barones, tunc capitaneos appellabant.*

^l *Philip. Venut. ital. Baroni sono i principali de la citta.*
^m *Hist. nov. l. 1. p. 9. & not. p. 197. Principum conventus.—Omnium stipulatione, et judicio.*

faith: the controversy between the archbishop of Yorke, and the bishop of Worcester, was determined in the councell att Pedreda, before the king, and archbishop Lanfrank, and the bishops, abbots, earles, and "primatibus," chiefe men, of all England. And the decree touching the primacy of Canterbury was made in a parlement of this king; which Eadmerus saith was "by the assent of the whole kingdome:" which cannot be understood otherwise, than by "the deputies of the whole kingdome" joyning with the king, and lords; who all together doe represent the whole kingdome. Butt not any part, of them, can be said to represent the whole; nor can the assent of one, or two estates, be called the assent of "the whole kingdome;" by which expression is implied, that deputies of the commons were in this parlement. Which is more expresse in a parlement before this, about 4. W. 1. wherof it is said, that the king, by the counsell of his barons, caused to be summoned throughout all the consulats, or counties of England, "english nobles, and wise men, and learned in their law^o;" that he might heare from them both their lawes, and customes: and twelve were returned out of every countey, who showed what the customes of the kingdome were; which being written by the archbishop of Yorke, and bishop of London were, with the assent of the same councell, (which was a parlement of that time,) confirmed. And that deputies of the commons were there appears by what is before noted. Butt it may be objected, that these 12, summoned out of each countey, were not members of that councell; butt rather jurors by their number, or inquisitors, to present the customs of their countries. For their number, the whole amounts to about 500, too many for the greater barons: and the appellations given them, of

^a Ann^o. 1070. M. Paris, anno 1095, refert ad 1070.—Malmesb. de gest. reg. l. 3.—Totius regni assensu.

^o Houeden in H. 2. p. 343. lib. Lichfield. MS. & not. ad Eadmer. p. 171. Anglos nobiles, et sapientes, et suâ lege eruditos.

“nobiles” and sapientes, were such as they usually gave in those times to members of their publique councells; and they were to declare the law, which was confirmed in this councell. Butt if they were not all members of it; yett the word “barons,” (as hath bin noted,) comprehends “commoners,” who, in our historians relating parlements, are often omitted to be named, when undoubtedly they were in the parlement. As in E. 3. and in divers other parlements, they are not named; when, it will not be questioned butt the commons, by their deputies, were in those parlements^p. Sir Roger Owen cites the payment of tithes to be one of the lawes recited at this parlement^q; and that, in the relation therof, it is said, “these things St. Augustin the monke taught: and they were graunted by the king, and the people;” which surely comprehends “the commons.” And he^r remembers the charter of W. 1. registered in the redde booke of the exchequer: in which, amongst the liberties of the people that is declared, and confirmed, that they be free from all tallage, and services, butt what are ordeined by statutes, and graunted by them; and by hereditary right belong to the king, and were graunted “by the common councell of the whole kingdom.” The which is no slender implication of “the commons” being parties therunto, in that parlement, by their deputies, under the name of “people, and common councell of the whole kingdom;” which comprehends more than the lords only.

It will be time to proceed a little higher, to inquire whither the commons had any share in the publique councells before the conquest; which to me (with submission) is very perspicuous, that they had. One evidence wherof is alleadged by Lambert, and by Coke^t,

^p Walsingham, p. 129. 10. ann^o. 1324.

^q MS. pt. 2. p. 123. c. 8.

^r p. 375.

^s Per commune concilium totius regni.

^t Lambert Ar-

cheion, p. 257. Co. epist. 9. rep.

in the antient boroughs of England, which præscribe to send burgesſes to parlement; and ſome of them time out of minde, and before the testimony of any record, have bin ſo decayed, (which comes not in a ſhort time,) that not above three or four houſes are left in ſome of them: yett, by this priviledge, muſt be acknowledged to have bin the antientest, and moſt flourishing townes; and doubtles were ſuch before the conqueſt, and ſent their deputies to parlement when they were great, and flourishing. Butt now there is neither any memory, nor record, of the beginning of their decay; or, the graunting of this priviledge to them: butt, in all likelihood, they both had it, and uſed it, before the conqueſt. Another inſtance is from the antient boroughs, which are called “antient demefne;” which were tenants of the demefne lands of W. I. and of Edward the confeſſor: who (to the end that they might not be hindered from their buiſnes of huſbandry of the king’s lands,) had many priviledges, wherof one was; that they ſhould not be compelled to ſerve in parlement. Another was, that they ſhould not contribute to the wages of knights of the ſhire. Which priviledges they ſtill injoy”; and, had their beginning in the times of W. I. and of the confeſſor, whoſe tenants they firſt were, as appears in the booke of Domeſday: and is a ſtrong prooffe, that knights and burgesſes were then in parlements.

King Harold, in effect, aſſerts this right of “the commons in parlement.” When Duke William ſent to demand the kingdome of him, the which he had taken an oath ſhould be duke William’s: Harold returned this anſwear. “As to duke William’s claime of the kingdome by the guiſt of the confeſſor, and as to his owne promiſe, he ſaid; that king Edward being then living, he could neither give away the kingdome’s ſucceſſion to him, nor graunt it

* Fitz. N. B. f. 14. 49. E. 3. f. 22. 23. 40. E. 3. 25. 11. H. 4. 2. &c.

to any other, without his consent; “and without the consent of the people, the decree of the senate^w.” The people’s deputies being a part of the senate, or else their decree could not be “with the consent of the people;” who cannot be intended att large in this place: it not being “the assent of the people, and the decree of the senate;” butt without the word “and,” (all in one sentence) “the assent of the people in, or by, the decree of the senate.” Nor is it possible the people should otherwise consent, than by their deputies, parties to the decrees of the senate: and this is a prooffe of their being parties therunto, in that time.

The bequest of the kingdome by Edward the confessor, to Harold, is said to want force, bicause it was made “on his death-bed, and without the common consent of his baronage;” which includes the commons, especially being expressed “the common consent^x.”

Houeden becites the lawes of the confessor, confirmed by W. I. in which one is (before noted) for payment of tithes “which are graunted, by the king, and by the barons, and people” who were, it seemes, parties to this graunt in publique councell, by their deputies: and heere is king, lords, and commons, cleerly expressed in this publique councell^y. So is it by that relation of Henry de Knighton, that this king Edward received, and confirmed the lawes, (known by his name,) “by the counsell of the barons, and of the rest of the kingdome^z :” which to those who doubt, whether barons then comprehended also the commons, is supplied by the word “caeterorum,” others besides the barons.

^w Histor. illor. tempor.—Math. Westminst. p. 434, 435.—Et sine populi consensu, senatus decreto.

^x Math. Westm. ann^o. 1066. In lecto lethali, et sine baronagii sui communi consensu.

^y P. 602. 40. Lex. 8. 9. Lamb. Sax. leg. p. 139. Hæc concessa sunt a rege, et a baronibus, et populo.

^z De euent. Angl. l. I. c. 15.—Consilio baronum, et caeterorum regni,

These lawes are by Houeden said "to be made by the counsell of the wise men:" and that appellation of "the wise men," Lambard affirmes was a received forme of speech to signify both the spiritualtie, and laitie^a; that is to say, the nobilitie and commons, by the only word "witena," or wise men; and of that word, and "ealra wittena gemott," and the often use of the word "wise men" for publique counsellors, somewhat hath bin before noted; by which I may be excused to passe over those expressions, where I meet with them, without further repetition.

In the great buisnes of the banishment of earle Godwin, and his five sons; the nobles mett in a great assembly: and "the king in his common councell, by judgement of his court, and by the unanimous consent of his whole army^b," banished the earle, and his sons; and a decree was published theruppon. Which expressions of "common councell," the very worde used in our present writ, may imply "the commons by their deputies" to be part of it. Butt to make the thesis more cleere, the next year, (saith Malmesbury,) "the cause being brought unto the popular suffrage;" the king restored the banisht persons. Which words, "popular suffrage," my honored father notes uppon this place, to be "instead of the lower house of parlement:" and the words themselves import the same fully^c.

Upon the building, and indowment, of the abbey of Westminster by this king, in his excellent and pious charter therof, he recites; that it was "by the councell, and decree, of the arch bishops,

^a P. 607. 10.—Sapientes cœperunt super hos habere consilium, et constituerunt. Lamb. Archeion. p. 256. & 252. 250.

^b Florent. Wigorniens. Rex in suo concilio communi, curiæ suæ judicio, et omnis exercitus unanimi consensu.

^c De gest. pontific, p. 204. Causâ in suffragium popularium deducta.—Instar domus inferioris parliamenti.

bishops,

bishops, earles, and others of his optimates, or best or chiefe men :” and that, “ having a common councell,” they dissuaded him from going to Rome : that “ by election, or consent of the whole kingdome^d,” (which could not be, butt by their deputies of all estates in parlement,) he betooke himselfe to the building of that abbey. Abbot Ailred in his relation of this story, and of the king’s vow to goe to Rome, saith ; that he “ called together the primates of the whole kingdome^e,” and conferred with them about his journey, and ordering the affaires of the kingdome in his absence. Wherin the king recites his story, in some passages therof not unlike a part of our kings ; which may pardon my longer insisting uppon it. “ The banishment of his relations, murder of some of them,” his own being forced to leave his countrey, and “ his ennemies prospering in all things, so that he became without hope :” I believing in hope, against hope, wholly giving my selfe up to the mercy of God ; he despised not my prayer, tooke away my reproach ; and “ without bloud, restored me to the kingdome of my father, and subdued my enemies^f.”

Uppon this speech of the good king to his publique councell, (as our author relates,) they all dissuaded him from his journey : “ the prelates commaund, the nobles pray, the commons urge” the king not to goe to Rome^g. This explains what he meant before by the word “ primates ;” the prelates, nobles, and commons, assembled in this publique councell, and debating uppon this great buisnes

^d Spelman. concil. p. 628. Concilio, et decreto, archiepiscoporum, episcoporum, comitum, aliorumque meorum optimatum.—Habito communi concilio.—Totius regni electione.

^e De vit. et miraculis Edwardi confessoris, col. 379. 380. 381. Vocatis totius regni primatibus.

^f Patribus peremptis, actis in exilium nepotibus ; cum hostibus nostris in omnibus fortuna faveret ; mihi profecto nihil spei superesse videbatur.—Restituit me in regnum patris mei, sine sanguine ; hostes subvertit, &c.

^g Imperant pontifices, rogant proceres, plebs extorquet.

with the king, their head. And it seemes their number was so great, that our author calles them "a multitude."

When the king of Norway sent to desire a navall assistance from the confessor, it is said; that earle Leofrick, "and all the people with one voice," (which could not be butt by their deputies,) "did contradict it." And when the king of Denmarke requested the like; which earle Godwin advised to be done; "it seemed" to earle Leofrick, "and to all the people, not to be counsell." This king's marriage was att a generall counsell, by "the common counsell" of his nobles^h.

The appeale which the king made against earle Godwin, about the murder of his brother Alfred, was heard before the earles, and barons; and the advise of earle Leofric was followed. That earle Godwin and his son, and 12 earles his friends and kinsmen, should goe humbly before the king, laden with as much gold and silver as every one of them could carry between his armes, offering them to the king, for the earle's trespas: and submissively praying; that he would pardon all his rancor and ill will to the earle, and restore his lands to him. Which was done; and the mercifull king ratified what his parlement desired. And Caxton saith; that the earle came to London "where the king then was, and all the great men, att the parlementⁱ." And abbot Ailred; that att the election of this Edward to be king, before he was yett borne, there was a great assembly, before the king, of bishops, and nobles; and meeting of "the people, and commons." And that this was in counsell appears; bicause "they treated about the state of the kingdome," (the words of our present writ) and of the succession to the crowne.

^h Wigorniens. Simon Dunelmens. Houeden, &c. Omnisque populus, uno ore, contradixerunt.—Et omni populo, id non videbatur consilium.—Idem authores. ⁱ Col. 397. 398.—Chron. ps. 6.—Ubi rex, et omnes magnates, ad parliamentum tum fuerunt. And,

And the king “asked the opinion of all of them; and the votes of all were for the child not yett borne:” which the author supports with a miracle^k. And after the death of Hardi-Cnute, a councill being assembled, Huntingdon saith; “he was chosen king by all the people^l,” which election could not be by all, otherwise then by the deputies of all the people. Mathew Westminster to the same effect; that “the clergy and people consenting, he was chosen king att London^m.” And att the same councill, (which Brompton, Fox, and others terme “the common councillⁿ,”) where all the magnates were treating together; they resolved, and bound it with an oath, that in the future never any Dane should reigne over them.

I come now to the time of the danish kings; the third and last of whom was Harde-Cnute, the son of Cnute, who was an ill king, and reigned not full two years: and was chosen king by the nobles, both of the English and Danes, agreeing in one opinion, in “a publique councill^o.”

His brother Harold was elected king “by the princes, and all the people,” which necessarily implyes the deputies of the commons^p.

Houeden and others relate; that the murder of prince Alfred was committed, when the earles, and barons of England, by common assent and counsell, sent into Normandy for him.

^k De vita, et miraculis, Edw. confes. col. 372. 373.—Agitur, inter eos, de regni statu tractatus.—Quid singulis quidve omnibus videretur explorat.—In puerum nec dum natum univerforum vota convertit.

^l Hist. l. 6. p. 365. Electus est in regem,

ab omni populo.

^m P. 415. Annuente clero, et populo, Londoniis in regem

eligitur.

ⁿ Col. 934. Fox. vol. i. p. 200. 212, &c.

^o Malmesb. l. 1.

^p c. 12. Ingulphus. Mat. Westm. Radus de Diceto, &c.

^p Florent. Wigorn.

Symon Dun. &c. ann^o. 1037. à principibus, et omni populo.

After the death of Cnute, the nobles “ mett att Oxford” to choose a new king; they mett “ to conferre^a,” and it is called “ placitum magnum.” That nobles, in these times, might comprehend commons, appears by the use of the word “ æþel” which, with them, signified every gentleman; therefore that in Bede, “ with all the nobles of his nation,” is turned by king Alfred in the faxon, “ all the æthelings of his nation.”

The lawes of king Cnute are said to be made “ by the common councell of my wise men;” and “ by the venerable councell of his wise men.” And his charter to Glaftenbury was graunted by “ the consent of his optimates, and by the grant of his nobles”. His letters from Rome are directed to the archbishops, all the bishops, nobles, and rulers, and to “ the whole english nation” as well nobles as plebeians^b.

In the year 1022, the English and Danes in a conference, or or publique councell, held att Oxford, agreed; that the lawes of E. 1. before the conquest, should be translated out of english into latin; and be observed both in Denmarke, and in England, for the equity of them^c.

Coke cites, out of a manuscript booke of the abbey of St. Edmondsbury in his custody, a parlement held in the fift year of king Cnute; “ when he called to his parlement all the prelates, nobles, and great men of his kingdome, in his publique parlement.” There being present the bishops, their suffragans, seven

^a Ann°. 1031. Convenerunt apud Oxoniam, ad colloquium.

^b L. 2. c. 14.

& l. 3. c. 1. Cum cunctis, gentis suæ, nobilibus, mid eallum æþelingun, hīr ðeode.

^c Ann°. 1033. Vid. Historias illor. temp. Communi concilio. venerando sapientum ejus concilio.—Spelman. Concil. p. 517.—Ann°. 1031. Hist. illius temp.

^d Mat. Westm. p. 404.

dukes with as many earles, divers abbots, "with many common soldiers (or as some would have it) knights of the common ranke, and with a great multitude of people: and all being then personally present in the same parlement, and unanimously consenting to the king's desires, it was commaunded, and decreed," &c.

The full objection, against this testimony, is a flatt denyall, that there is any such booke: for which the affirmative testimony is not inferior to the negative, for the matter of it. "The gregarii milites" are by some interpreted "knights of the shires." Gervasius Tilberienfis useth the word for "an officer of the exchequer," who surely was not a common soldier; and hardly can it be thought, that such should be admitted in this publique councill personally, and to consent to the king's desires, and be parties to the decrees. Butt both the words "gregarii milites," which signify knights or soldier de grege, of that company where they were; and "the great multitude" of others, besides the bishops and nobles, which multitude was present personally in the councill, and assenting to the acts of it; may rather be taken for "representatives of the commons," than for the vulgar sort, and rabble att large, who doe not use to be present, or to consent to acts of councill.

In the third year of this king the historians relate, that "he assembled a councill---that he had a great councill---a councill of the clergy, and nobles". In the second year of his reign was the parlement assembled att Oxford, (which the historians call by that

^u Epist. 9. rep. Coke. Cunctos regni sui prelatos, procuresque, ac magnates ad suum convocans parliamentum, in suo publico parlamento—cum quamplurimis gregariis militibus, ac cum populi multitudine copiosa: ac omnibus tunc, in eodem parlamento, personaliter existentibus, votis regiis unanimiter consentientibus, præceptum, et decretum fuit.

^w Ann°. 1020. Concilio congregato—Magnum concilium habuit. —Concilio cleri, et procerum.

name,) where the lawes of Edgar were agreed to be observed. And in his first year, in the agreement between him and Edmond, all the english nobles and army, “ordeined a tribute should be paid to the,” danish, “fleet^x.” And to please the English he graunted them equall priuiledges with the Danes, in assemblies, counsell, and in battle. And obtained the crowne by courting the bishops, dukes, princes, and nobles of the english nation; whom he assembled in a publique counsell^y.

The combat between king Edmond, and Cnute, was uppon “a conference of the nobles of each army:” rather a counsell of warre, than a parlement. Yett the commaunders are there stiled by the name of “proceres of the army.” And presently after king Ethelred’s death, the bishops, abbots, dukes, and “some of the nobiliores Angliæ,” were assembled: as others relate it, “the greatest part of the kingdome, as well of the clergy as of the laity,” mett^z, and chose Cnute king. None will deny, butt that the earles, and barons, or thaines, were present, though not named: and “the greatest part of the kingdome” to meet, and assent, cannot be taken otherwise than by representation.

The parlement summoned by king Ethelred is called “the great counsell---the great placitum---the great conference.” And after the death of Swaine it is sayd; that the navy, and nation of the Danes, chose his son Cnute king. Butt the majores natu, the elders or senators, and nobles, sent for Ethelred to come, and take the crowne: and those words intimate “the commons, and lords also^a.” The pay-

^x Anno 1018.—Florent Wigorn. p. 385. Tributo, qui classicæ manui penderetur, statuto. ^y Aethelredus abbas, Col. 965, 966, &c. ^z Col. 363.

Uterque exercitus proceres ad colloquium cogunt.—Anno 1016.—Quique nobiliores Angliæ. Maxima pars regni, tam clericorum, quam laicorum. ^a Anno 1015.

Magnum concilium, placitum, colloquium.—Anno 1014.

ment of the danegeld was agreed uppon in an assembly of all the primates, of every order and dignity^b. King Ethelred called the magnates of his kingdome, to advise about sending ambassadors to the Danes. And before that, in one year, he held three publique counsell; wherin he, and "his wise men," made and published many excellent lawes, both civill and ecclesiasticall: and they are called "statutes, in our synodall assembly;" which all the optimates of that time promised to observe^c. The title and beginning of divers of his lawes are; "the wise men also decree"--"att this parlement all the bishops, and nobles, were present^d". His consideration of the buisnes of the Danes, to raise a tribute for them, was by the counsell of his primates. And Huntingdon and Brompton say; that "the king, and the senate of the English, by common deliberation," agreed the tribute. Ulfketel, duke of the East Angles, tooke counsell with the majores, how to resist the Danes^e.

The charter of this king, wherby he putt out the secular priests out of Christ's church, in Canterbury, and brought monkes in their places, was "in a publique counsell;" and subscribed by the king, archbishops, bishops, abbots, and "severall aldermen, nobles, and officers;" which probably were, some of them, of the ranke of "commoners^f." And in this year againe the king takes counsell of the primates; and gathers an army, and navy, by the counsell of the primates. And the league between him, and Anlase king of Norway, was by the counsell of his "nobles and wise men;" and "confirmed by all his wise men, with the army." Before this he provided a

^b Anno 1012.^c Anno 1007. Chron. Brompt. Col. 893. Spelman. Conc.

p. 530.

^d Cap. 5, 6, 7. Sapientes etiam decernunt. Spelman. Concil. p. 510.^e L. 6. p. 360. Rex et senatus Anglorum, communi deliberatione. Anno 1004.—Hunt. l. 6.^f Anno 1001.—Chron. Thorn. Col. 1780. Spelman. Concil.

p. 504.

fleet, said to be done by the counsell, and commaund, of the king, and "his nobles^s."

Uppon receipt of letters from the pope, the king "assembled all the faithfull men of his realme, and all the wisest men of both orders^b;" and he made a peace with the marquesse of Normandy, (so was he then called.) And it is to be hoped, that "all the faithfull, and wisest men of the realme," might include some of the "commonaltie;" and hardly meet, butt by "their deputies."

The first taxe, imposed on the English, is said to be that of danegelt: and the councell that imposed it, is called the unlucky councell; and the archbishop who first advised it, Siricius, condemned by all the historians of that time. Some of them say, that the dukes "and nobles" graunted it; others, that "the English did ordeine;" another, that the king, "calling to councell the statesmen, and peeres," agreed it. Another sayes; that it was graunted in "the generall assembly, of the states," att Londonⁱ.

In a great councell, or wittena-gemot, by judgement of "the ealdermen and thanes," the bishop of Winchester recovered lands against one Leffi. And to this councell "dukes, princes, rulers, rhetoricians, and lawyers, came from all parts: and, before all, the matter was opened; and all gave judgement." And this matter coming afterwards in the countey court, the same judgement was there given: and "all the people restored, to the bishop, what be-

^s Anno 997, 998, 999.—Ann^o. 994.—Brompton, Col. 899, 900. Et omnes sapientes ejus, cum exercitu, firmaverunt. Ann^o. 992.

^b Anno 991. Malmesb.

Accersitis cunctis sui regni fidelibus, utriusque ordinis sapientioribus.

ⁱ Huntingdon, l. 5. p. 357. Brompton, Col. 879.—Statuerunt Angli. Speed. p. 415, 416.

longed to him^k." Whether these "rhetoricians, and lawyers," were members of the councell, or only assistants or auditors, appears not. Butt it is said; that "all gave judgement:" and if that be restrained only to the "bishops, and ealdermen, and thanes;" that word "thanes" did include "commoners" also.

Uppon the great difference^l between the monkish clergy and married secular priests, (presently after the coronation of king Edward the son of Edgar;) to settle it, a synod was assembled, and the cause was to be decided in "a great councell of the whole kingdome," (which could not be butt by their deputies.) And the dukes, "with all the great men of the whole kingdome," were present; when the suffrage, of the greater part, was for the priests. When the king was about to passe his sentence, a divine voice, (say our monkes,) was uttered by the crucifix in the wall; God forbid, that this should be done! Some say (and not improbable,) that Dunstan the bishop, (who was against the priests,) had appealed to the crucifix, in which he placed a man, with a tronke, in the wall behind the image; who uttered this voice in, and by, the mouth of the rood. Butt the nobles not being convinced by this miracle, (which shoves their suspition of it;) three other great synods, or great councells more, were held about this controversy. The last wherof was att Calne; where "all the senators, and nobles of England," (large words,) sitting together att this councell in an upper room; the floor, and beames, brake: and the people fell downe, many of them killed, and all the rest hurt, except the bishop Dunstan; to whose judgement, uppon this second miracle, all submitted^m.

^k Anno 982. MS. de operib. B. Edelwoldi Episcopi Lib. Ely. 2. tit. hon. Seld. p. 693. Duces, principes, satrapæ, retores, et causidici ex omni parte confluxerunt. — coram cunctis—omnes judicium reddiderunt.—Omnis populus reddiderunt episcopo quæ sua erant. ^l Anno 977. ^m Malmesb. Mat. Westm. Wigorn, &c.

This Edward was chosen king by “the bishops, abbots, and nobles, together in a great councell; by the major part of the councell, being clergy menⁿ.”

King Edgar by his charter, in parlement, confirmed by “the wise men, bishops, and others” in his presence, removed secular priests out of a monastery; and, placed monkes there^o.

Bishop Oswold having ejected the married secular priests, out of his church att Worcester; and introduced monkes in their places; procured king Edgar, by “the councell and assent of his princes, nobles, and bishops in a publique councell,” to ratify the same^p. And by his charter this king graunted, and confirmed, many privileges to the monastery of Glastonbury, “by the common councell of the bishops, abbots, and princes; and by generall assent of the prelates, abbots, and optimates.” He drove out the priests, and placed monkes in their roome; “by the councell of the bishops, and magnates:” and this is called “a generall councell.” His lawes were made “in the usuall senate, by the counsell of his wise men.” His charter to Croyland abbey was confirmed by the king, bishops, and nobles, in a councell att London. He founded the monastery att Hide by advice, and consent, of his bishops, and nobles. Brompton sayes; “he called his parlement att Salisbury,” where all his nobles were assembled, about resisting the Danes. And it is said; “he was chosen king by all the people^q.”

ⁿ Anno 975.

^o Anno 884. Malmesb. Ingulphus, &c.

^p Anno 969.

Spelman. Concil. p. 432. Mat. West.

^q Anno 970. Malmesb. Spelman

Concil. p. 483. Communi episcoporum, abbatum, principumque consilio; et generali assensu pontificum, abbatum, optimatumque. Anno 966. Anno 969. Frequenti senatu, consilio sapientum. Ingulphus, p. 880.—Anno 966.—Anno 963. Rex parliamentum suum apud Sarisberiam convocavit.—Ab omni populo electus.

Uppon the diffentions between Edgar, and his brother Edwin; “att a councell of the kingdome” assembled att Brainford, he repealed his brother’s acts’.

King Edred summoned a publique councell, to which the great men of the whole kingdome came; “the arch bishops, bishops and abbotts, and the other nobles, and optimates’ :” and I find no other parlement in his time.

King Edmond, att a feast, spying a thiefe in the roome, (whom he knew,) commaunded his butler to thrust him out; butt the thiefe resisted: wheruppon the king himselfe rose from the table, and threw down the thiefe uppon the ground, who drew out his knife, and killed the king. Butt his flesh was cutt in pieces by the king’s servants: and “it was decreed by common councell;” that the king’s body should be buried in Glastonbury Abbey, to which he had graunted large charters “by the counsell, and assent, of his optimates’.” The same year good lawes were made by this king, and his bishops, and “wise men” att Culinton. The proeme to his lawes is; “he held the usuall assembly att London, both of ecclesiasticall and lay persons.” Another version is, “he assembled the great synod, of the order of God, and of secular men.” His own proeme is. Know ye, that I have inquired of the most knowing men of my kingdome, in the famous assembly of ecclesiasticall, and lay persons: “seeking I have fought with the wise men, of the clergy, and laity.”

’ Parker Antiq. eccles. p. 4. 153. Spelm. Conc. p. 431. ’ Anno 948. Ingulphus, Houeden, &c.—Tam archiepiscopi, et episcopi, et abbates, quam cæteri, totius regni, proceres, et optimates. ’ Anno 946.—Communi decretum concilio.—Anno 944. Consilio, et assensu optimatum meorum. ” Frequentem Londini tam ecclesiasticorum, quam laicorum, cætum celebravit.—Congregavit magnam synodum dei ordinis, et sæculi.—Investigans investigavi cum sapientibus, clericis, et laicis.

Howel Dha, prince of Wales, summoned a parlement, wherein is a cleer prooffe of commoners being parties in it. It is said; "he summoned out of every kemut, or hundred of his kingdome, fixe lay men excelling in authority, and knowledge"; and all ecclesiasticks dignified with a pastorall staffe: and they continued together all the lent, fasting, and praying, and making lawes; workes very meet to be conjoynd, and this precedent to be followed.

King Ethelstan consulted ^x with an assembly of his "nobles," about the marryage of his sister; and the bishops are not named in it. The judgement in his time against Elfrid after his death, to forfeit his lands, was by all the optimates of the kingdome of England. To advise against the Danes, he assembled "the great men". In the councell of Feversham in Kent, the word "sapientes," wise men, is used in the generall; and in the lawes then made by "the wise men," members of the councell. And att Exeter, the king Ethelstan, and his "wise men," by common consent confirmed the lawes made att Grateley. The which councell, is called "the great synod, to which the archbishop's, and all the optimates, and wise men," were summoned by the king^z. And he recites; that "by the counsell of the bishops, and servants of God:" which I hope may also include "commoners, and the lords" with them, and under the favour of any detractors from them, and which the clergy also will now indure, others with them may be permitted the most honorable title of "God's servants."

^w Anno 940. Spelman Concil. p. 408, 411. Accivit, de quolibet Kemut totius regni sui, sex laicos viros, auctoritate et scientia pollentes.

^x Anno 876.

^y Anno 932.

^z Anno 928. Totum hoc institutum est, et confirmatur, in magna synodo apud Grateleyam; cui archiepiscopus, et omnes optimates, et sapientes, &c.

This king Ethelstan was designed by his father's will to succeed him; and was elected king, "with the great consent of the optimates, and by the favour of all^a."

King Edward made good lawes, by the counsell of his "wise men:" and he assembled a synod of "the senators" of the english nation; or a great councill of bishops, abbots, and faithfull people, (which I hope may likewise comprehend commoners,) where they appointed seven bishops^b.

King Alfred, and Guthurn the dane, gave lands to the church of Durham "by consent and approbation, of the army not only of the Danes butt English^c." And that this was in a publique councill appears, bicause the acts of it are called lawes and statutes. When by his perswasion Guthurn the dane was turned christian^d, and by the league between them had the east parts of England to inhabit; they both made good lawes "by common consent of their great councills, and wise men." Horne relates, that among other lawes this king Alfred, and "his wise men" ordeined, that a parlement twice every year, and oftner in time of peace, should be called together att London. And att his comming to the crowne, by "common consent of his wise men," ordeined a navy to be prepared^e.

St. Edmond the king is said to be chosen king of the east Saxons, by "all the great men, and people" of that realme^f. His faulkener, who had murdered Lothbroc the dane (driven by tempest on

^a Anno 924. Malmesb. Wigorn. Huntingdon, &c. Magno optimatum consensu, et omnium favore.

^b Brompton, col. 831.—Anno 905.—Malmesb. Mat. West.

^c Anno 894. Simon Dunelmensis, col. 22, 23. Non solum Anglorum, sed et Danorum, consentiente et collaudante exercitu.

^d Anno 879.

^e Mirroir des

Justices, c. 1. §. 3. p. 10. & c. 5. §. 1.—Anno 871. 873.

^f Anno 855.

Mat. West. Malmesb. Houeden, &c.

the english shore in a little boat;) for this fact the faulkener was, by judgement of “the knights, and lawyers,” banished the realme; and putt into the little boat, and so sent to sea: who maliciously accused the king to have committed this murder; uppon which pretence Inguar, and Hubba, the sons of Lothbroc, to revenge their father’s death invaded England with a great power.

King Beorred confirmed lands to the abbey of Croyland, by his charter “before his brothers, and friends, and all his people, assembled together in the siege of the pagans,” which was att Nottingham^g. This king, and all the optimates of that realme assembled; where the king “had counsell with his earles, and fellow souldiers, and “all the people subject to him^h,” how to expell the Danes.

King Ethelulfe was made king by the prelats, nobles, and “people;” which his father also bequeathed to him by his will. This king, by his charter, confirmed lands to the abbey of Abingdon, by the counsell of his bishops, earles, and “all his optimates.” Butt more expresse is his charter, of graunt of tithes, with the “councell of his bishops, and princes;” which in the end of the charter is thus explained: there being present, and subscribing, all the archbishops of England, also the king of Mercia, the king of East Angles; and of abbotts and abbeses, dukes, earles, and nobles of all the land, and of “other faithfull people” an infinite multitudeⁱ. And still I hope “faithfull” comprehends “commoners;” and “multitude” implyes cleerly their “number.”

^g Ingulphus, p. 863, 864. Anno 868.—Coram fratribus, et amicis, et omni populo meo, in obsidione paganorum congregatis.

^h Anno 868.—Sim. Dunel.—Consilium habuit cum suis comitibus, et commilitonibus, et omni populo sibi subjecto.

ⁱ Anno 857. Mat. Westm.—Hist. tithes. Seld. p. 208.—Anno 854. Mat. West. Hist. tithes. Seld. p. 208.

King Bertulfe held a great councell, to advise how to resist the Danes; and a petition was delivered to him and his councell, by the abbot of Croyland, for remedy against severall injuries done to the abbey, [when] they were gathered together about the affayres of the kingdome: and the king confirmed the lands and priviledges to the abbey, “by common councell of the whole kingdome;” all the prelats, and nobles, consenting^k. And a miracle was wrought in the councell, whilest they were debating of this matter. St. Guthlac, the faint of that abbey, tooke it so well; that wheras a kind of palsey was a disease then very common, and divers both of the greater, and lesser ranke, (which implies “commons,”) were troubled whilest they fate in the councell with that disease: the faint cured them all instantly; which they acknowledge in their subscriptions to the king’s charter of confirmation.

King Egbert held a councell with his bishops, and nobles; and would have given lands to Christ’s church, butt it pleased not “all the princes;” without whose consent, (saith Spelman,) the king could not graunt them: butt they assembled afterwards^l. This king Egbert, Æthelulfe his son, and Witlafius king of Mercia, both the archbishops, abbotts, with the greater nobles of all England, were in councell against the Danes^m. In this councell was confirmed the charter of Witlafius, to Croyland; who having bin elected king, “by the consent of allⁿ,” held his kingdome of Egbert. And this his charter was confirmed by Egbert, and by his son, and by all the bishops, abbotts, “and greater nobles of England^o :” by addition of which word “greater,” to nobles, is implied that, without this word greater, “nobles” includes both

^k Anno 850. Ingulph. p. 858.

^l Anno 838. Evidenc. Eccles. Cant.

^m Anno 833. Ingulphus.

ⁿ Omnium consensu.

^o Et Proceribus

majoribus Angliæ.

greater and lesser; or else "greater" need not to be added to it, as sometimes it is.

King Beornulfe held a councell, or parlement, att Clouesho; wherein he sate president: and Wulfred the arch bishop, with the rest of the bishops, abbots, and "optimates of all dignities," (both ecclesiastique, and secular,) were present; to consult about regulating the church, and matters of safety^p. There the difference was heard between abbesse Kennedrytha, daughter of king Kenulfe, and the arch bishop Wulfred, from whose church Kenulfe had wrongfully taken lands: then "all the councell" found it to be justice, and decreed it by unanimous consent. And it seemed good to king Beornulfe, with his "wise men," (for friendship sake,) to make reconciliation and amendes for the said lands, between the heirs of king Kenulfe, and the arch bishop; which was afterwards performed. And the frequency of parlements in these times appears, in that this king held four councells, in his four years reigne.

King Kenulfe held a councell att Celichith, where the archbishop with his suffragans, and the princes, dukes, nobles, and sundry abbots, priests, deacons, and other sacred orders, were present^q: which, being of the inferior rankes of "the clergy," may imply some of the like ranke of "the commonaltie" to be admitted likewise.

This king held a councell att Clouesho, the archbishop, and all the bishops, dukes, abbots, and men of all sorts of dignity, [being present:] and by synodall judgement, "and voice of all it was decreed;" that lands wrongfully taken from the church of Canterbury should be restored. And in this councell, the king with his bishops,

^p Anno 822. Evidenc. Eccles. Cant. Spelman Concil. p. 333. Florenc. Wigorn.

^q Anno 816. Spelman.

^r Anno 800.—Omnium voce decretum est.

dukes,

dukes, and “all degrees of dignity under his government,” sent a letter to the pope, for restoring the supremacy of the see of Canterbury; and making againe butt one arch bishoprick^s. Before, he assembled a councell of 13 bishops, and 10 dukes: and another in the same year in which the king sat president, with the arch bishop, 17 other bishops, fundry abbots, archdeacons, and other “fitt persons^t,” which implyes “them” to be inferiour to archdeacons who were then present; wherein it was decreed, that no layman should exercise dominion over the lord’s inheritance, and churches; butt they might, over laymen; and be governed themselves by themselves, and according to their owne canons.

King Kenulfe held a councell with his bishops, together with a number or “company of rulers^u,” touching matters of religion; which perhappes might occasion the decree last mentioned.

King Egfrid gave lands to the church of St. Albans, confirmed in a publique councell by the subscriptions “of all the bishops, earles, and barons of his empire^w.”

His father king Offa, in a councell with all “the primates, and nobles,” proposed his foundation of the abbey of St. Albans; and “it pleased them all^x.” And the king went to Rome, obtained (without difficulty) the pope’s consent; founded, and indowed the abbey, by the councell of his bishops, and optimates. Att the councell for confirmation of it, were present 9 kings, 15 bishops, and 20 dukes. This king Offa, with king Kenulfe, with all their ecclesiasticall and secular princes, nobles, elders, bishops, and abbots

^s Malmesb.

^t Anno 798.

^u Anno 797. Bonif. Mogun. episcopus MS.

Ep. 112. Caterva satraparum.

^w Anno 797. Mat. West. Speed. &c. Omnium

episcoporum, comitum, et baronum imperii sui.

^x Anno 793. Mat. West.

Spelman.—Placuit omnibus.

were

were present; where they made ecclesiasticall, and temporall, lawes^y. This Offa, by unanimous consent “of all,” as well clergy as “people,” was crowned king.

Sigebert, “by unanimous consent of all,” was sett aside^z upon prudent deliberation, (in a councell att Clovesho,) with his princes and dukes, peeres, and “commons” there named; and was afterwards slaine by a swyneherd, in revenge of his master’s murder.

King Ethelbald held a councell at Clovesho with his princes, and dukes; and gave lands and priviledges to the churches, which was confirmed in that councell in these words. “Our magistrates, optimates, and dukes, and most faithfull friends have graunted and subscribed”---and att a former councell there, concerning religion, a former decree was confirmed “by all^a.”

King Ina’s graunt, of peterpence, “was confirmed by a generall decree of councell.” His graunt, to the abbey of Glastonbury, was confirmed by the subscriptions of himselfe, of his queen, and of king Adelard her brother; and with the consent of all the kings of Brittain, archbishops, bishops, dukes, and abbots. He took to wife a Brittain lady, king Cadwallader’s daughter; and by his example, the rest of the English tooke them wives of the Brittain race, and the Brittaines tooke them wives of the English and Saxons; “by common councell, and assent, of all the bishops, and princes, nobles, earles; and of all the wise men, elders, and

^y Anno 787. H. Huntingdon, &c.

^z Anno 756.

^a Anno 747.

Mat. West. Brompton. Huntingdon. Nostri magistratus, optimates, et duces, fidelissimique amici concesserunt, & scripserunt.—Ab omnibus.

people of the whole kingdome^b:" and so became united, and the realme was called England. And this was in a publique councill; and the generall words, by which it is described, may well be admitted to include "commoners."

Ethelbald founded the abbey of Croyland, with consent of his bishops, and "nobles^c."

Kenred and Offa, by their charters, confirmed lands and privileges to the abbey of Euesham, in the presence of many archbishops, bishops, princes, and "nobles of sundry provinces." And the pope required the archbishop to summon a councill "of all England;" of the kings, bishops, religious persons of holy orders, and the optimates, and "nobles of the kingdome:" before whom the pope's confirmation, of this grant, was published^d.

Wilfred archbishop of Yorke, being by a councill deprived of his bishoprick, appealed to Rome; and procured the pope's letters for his restitution, which were read in "a publique councill^e." And king Alfrid answered: that it was against reason, to communicate with a man, already twice condemned by the "whole councill of the english nation;" for any writings of the pope.

King Withred, with consent of "his princes," did graunt privileges to the churches in Kent. And in a councill at Berkhamsted, by the advice and common consent of his bishops, and other ecclesia-

^b Anno 727. Statutum est generali Decreto. Anno 729. Spelman concil. p. 227. Brompton. Consentientibus etiam omnibus Brittanix regibus, &c. Anno 720. Leg. Edw. Spelman. Polychron. Per commune concilium, et assensum, omnium episcoporum, et principum, procerum, comitum, et omnium sapientum, seniorum, et populorum totius regni.

^c Anno 716.

^d Anno 708, 709. 712. Antiq.

eccles. Brit. p. 20. Balæus.

^e Anno 678.

fticall orders, with certain military men^f (by some interpreted knights then in councell,) enacted divers good lawes. And he summoned the archbifhop, the bifhop of Rocheſter, with the other abbots, abbeſſes, prieſts, deacons; and after them, dukes, and earles, to a great councell: to conſult about the ſtate of the church^g.

King Ina, by the exhortation and advice of Cenred my father, Hedda and Erkenwald my biſhops, “and all my aldermen, and eldeſt wiſe men of my people, and alſo a great company of the ſervants of God^h,” (which I ſhall never butt hope includes commoners;) did make fundry excellent lawes both for the eccleſiaſtique, and politique ſtate: and ſurely, “eldeſt wiſe men, and God’s ſervants,” may well comprehend ſome of “the commoners.”

King Egfrid gave lands to St. Cuthbert, to the church of Durham, by advice of the biſhops, and “whole councellⁱ.”

Many other graunts to churches were made by thoſe elder ſaxon kings; all which were ratified in “publique councells,” deſcribed according to the fancy of the hiſtorians.

King Ceadwalla, in a councell, graunted lands to biſhop Wilfred, with the conſent, and devout confirmation, of “all his optimates^k.”

Archbiſhop Theodore held a councell att Hertford, where was preſent the biſhops of England, and the kings, and all the great men: where they enacted, that once, or twice a year, a ſynod ſhould be held att Cloveſho^l.

^f Anno 700.—Anno 697. Spelman. Conc. p. 194. Cum quibuſdam viris militaribus.

^g Anno 694. Thorne.

^h Anno 692. ⁊ mid eallum minum ealþorþmannum,

⁊ ðam ylþeȝtan ȝeatan minne ðeode; ⁊ eac mýcelne ȝomnunge Godeȝ ðeopena.

ⁱ Anno 685.

^k Anno 680. Evid. Eccles. Cant.

^l Anno 673. Beda.

Flor. Wigorn.

Paulinus perfwading king Edwin to become a christian, the king answered; that he was willing, but ought first to conferre with his friends, princes, and counsellors: and assembling his wise men, and the kings, nobles, elders, and counsellors (which may include "commoners,") all consenting, they imbraced the faith of Christ^m.

King Æthelbert, the first christian saxon king of Kent, att Canterbury, called "a common councill as well of the clergy, as "people;" which surely includes the commons: and there, "by the approbation and consent of all, and singular, of them;" with the assent of the archbishop Augustin, his princes, with his son, and other nobles, and optimates; he graunts lands, and priviledges, to the church of Canterbury; and makes lawes, with the advice of his "wise men." And that these, and the deputies of the people, had their votes heerin, appears; in that they all consented, and approved what was done in that councill. And these "lawes" are said to be published and "given in the native language".

I am now come to the time of the Brittaines, who also had the like "publique councells;" and "deputies of the commons, or commoners," members of them.

Cadwin, by the unanimous consent of "all the princes, and nobles," of the Brittaines, (assembled in councill att Leycester,) was elected, and made king of the Brittaines^o.

King Arthur succeeded Uther Pendragon, his father, who was poysoned by the Saxons: and then the archbishop, associating to

^m Anno 627. Spelman. Beda. Mat. West, &c.

^a Anno 605. Thorne.

Spelman. Brompton. Tho. Sprot. &c. Communi concilio tam cleri, quam populi—
Om nium et singulorum approbatione, et consensu.—Leges patrio sermone tulit.

^o Galf. Mon. l. 12. c. 1. 2. 5. Spelman Concil. p. 112.

himselfe the bishops, and great men, they advanced Arthur to the crown. Who, having routed the Saxons, in twelve battles, is said to have conquered France: and keeping his court att Paris he, assembling the clergy and "people," confirmed the state of the kingdome by law, and peace. Uppon his invitation there came to him, to Caerleon, of his subjects 13 kings, three archbishops, with fundry princes, dukes, consuls, earles, and nobles, in "a publique councell:" to whom then came the 12 ambassadors from Rome, who demaunded the tribute from England. The letter from Lucius Tiberius, about it, was read in the presence of "all the kings and nobles," whose advise Arthur required; and they "all assented," not to pay the tribute: and Arthur accordingly gave an high, and stout answear, to the ambassadors^p.

Uther Pendragon, calling together "all the great men of his kingdome, in a publique councell," sharply reprov'd them for their pride, and slouthfullnes. And uppon his brother's death, (who was poysoned,) Uther assembled the clergy and "people," and tooke uppon him the crown; and commaunded to be summoned to him his "consulls, and princes", to advise about resisting the enemy; which he did to the last. And being sick, yett would be carryed in a litter into the camp, and defeated the Saxons^q.

Aurelius Ambrosius, at Ambri, sett up a monument for the Britains there treacherously slaine: and held a councell with his bishops, abbots, and other nobles, where he disposed the kingdome, and renewed the laws. Att Yorke he assembled "the consulls, and princes," of the kingdome, and commanded the repaire of churches destroyed by the Saxons: (whom after he had defeated,) he assem-

^p Anno 516. Galf. Mon. Mat. West. Walsingham.
498. Galf. Mon. Mat. West.

^q Anno 512.—Anno

bled att Gloucester "his captains, and nobles," requiring them to resolve what ought to be done concerning Hengist, whom duke Eldoll had taken prisoner. To which the bishop of Winchester sayd; though all would sett this man free, yett I will hew him in pieces. O effeminate men, why doe ye demurre! Did not Samuel, when he hewed in pieces the king of Amalek, say; as thou hast made many mothers childlesse, so will I this day make thy mother childlesse? So doe ye likewise concerning this other Agag, who hath bereaved many mothers of their children. Uppon which words Eldol, drawing forth his sword, led Hengist out of the citty, and cut off his head.

The Saxons, under Hengist, proposed to Vortigerne an agreement, which was offered to be confirmed by "common assent." And a meeting being att Ambri, for that purpose, the Saxons treacherously flew 460 of the british "nobles, barons and consulls," but duke Eldol, with a stake, flew 70 Saxons, and then escaped.

When the nobles petitioned Vortigerne to expell the Saxons, he contemning to acquiesce in their advice, the great men of Britaine deprived him, and chose his son Vortimer king: who, in all things, followed "the councell of his own subjects;" but was poysoned by his mother in law. This Vortigerne caused the guard of Picts, whom he had placed about Constans the king, to murder him: and then faigning himself sorrowfull, he called the cittizens of London together, and acquainted them therewith; and caused the Picts to be flain, to excuse his own guilt. Then he usurped the crown, and was a great tyrant: warre and pestilence raged in the land, so that the living were not sufficient to bury the dead. Vortigerne sum-

mons a publique councell, “ requiring the advice of his nobles, and great men, about the state of the kingdom,” the Brittaines tooke councell what to doe; and it pleased them all, with their king Vortigerne, “ and the whole nobility consented,” to call in the Saxons, which was done, the miserable effects whereof the story wittnesseth.

When Constans the monke was made king, it is said, “ the people” scarce consented to it.

The british king Constantine, having subdued the enemy, “ called a publique councell att Chichester;” and there he was made king.

King Octavius being old, and having one only daughter, demanded of “ his counsellors” whom they would have to succeed him? The greater part was for sending for Maximinian, (a roman senator descended of the british and roman royall blood;) which was done: and he, “ by common consent,” had the daughter and kingdom.

Afclepiodorus was made king, “ by common consent.” He was slain by Coël, duke of Colchester, who made himselfe king; and dyed shortly after, leaving one daughter, Helena, married to Constantius the Roman governor heere. Who used to say, that it was better, for the publique, to have the wealth dispersed “ in the commons hands.” By this Helena he had issue, Constantine the great; who succeeded his father in the empire.

* Malmesb. Super statu publico in medium consulit, sententias magnatum suorum explorans. Huntingd. Ethelwerdus, Tota nobilitas concessit. † Anno 445.

* Facta in Cicestriâ concione. † Anno 379, Ponticus Virunnius. l. 5. Galf. Mon. l. 5. c. 9.

King Lucius, (the first christian brittish king,) and his^x nobles, petitioned the pope to send to them the roman laws; which the pope denied, butt writ answear: you have both testaments; out of them "take a law, by the counsell of your kingdome". And it is the opinion of George Salterne, that this king did thereupon call a councell, or parlement: a thing (saith he) used in those times^z.

Joseph of Arimathæa, with 11 more of Phillip's disciples, arrived in Brittain; and preached the gospel, whereunto king Arviragus, with his nobles "and people," did not consent: butt allowed these holy men maintenance^a. This king being offered terms of peace, by Claudius the emperor; "the elders perswaded him^b to submit to it, and to pay the tribute; which he did accordingly.

I am now come to the time of Julius Cæsar, to whom Cassibelan denying tribute, he came over from Gaule hither, with his forces^c.

Cassibelan, "by common councell," was elected generall; who asked councell of "the princes, and nobles, of the kingdome," how to resist Cæsar. And after he had repulsed him, he made an edict; that "all the nobles of Brittain" should meet att Troynovant, to offer prayes and sacrifices to their gods, for this victory. In their pastimes, Cassibelan's nephew was killed by the nephew of the duke of Troynovant: att which the king being angry commaunded; that the offender should appear, and undergoe such sentence as "the nobles of England" should decree or adjudge. But Androgeus would not permit his nephew to come to tryall, saying; that he had a court of his own in Troynovant, where all matters

^x Anno 185.

^y Per concilium regni vestri sume legem.

^z Lib. de

antiquis Brit. Leg. c. 5.

^a Anno 63. Bp. Usher de primord. Brit. Eccles.

^b Suaserunt majores natu.

^c Anno 54. ante Christi natum.

arising there ought to be tryed: and the diffention between him, and Cassibelan, made the way for Cæsar's conquest^a.

Uppon this Salterne affirmes, that the nobles, together with the priests, and other selected commons, made "the common counsell" of this Island^c, whereof Cæsar speaketh; and which at this day is called "the parlement;" and in the most of our histories, called "the councill of the wise men^f."

Elidurus Pius summoned "all the princes, and nobles" of the realm, and prevayled with them to receive again Archigallo, (his brother,) for their king, whom they had formerly deprived; and himselfe putt off the crown, and putt it on his brother's head: for which, and other good acts, he merited the name of Pius^g.

The king of Denmarke being taken prisoner, by Belinus, he assembled att Yorke "all the nobles of the realm," to treat by their counsell what to doe with Guthlar king of Denmarke, his prisoner, for assisting his brother Brennus. The Dane offered a tribute; and "all the nobles, when it was judged so, did give their assent to it^h." Afterwards Brennus returning with an army, out of France, against his brother; they were reconciled by the wisdom and mediation of their mother: and then "they tooke councill what they should doeⁱ;" and invaded France, and sacked Rome.

Dunwallo Molmutius made his excellent laws, (part whereof are att this day in force, in our magna charta, and other lawes,) by

^a Cæsar's Comment. l. 5. Communi concilio. Stow's Survey Lond. p. 2. Speed's Hist. p. 48, &c. ^c Lib. de antiq. Brit. Leg. c. 6. ^f Concilium sapientum.

^g Mat. West. Pont. Virun. Galf. Mon. &c. Proceres omnes, et principes.

^h Anno 400. ante Christi natum. Mat. West. Pont. Virun. Galf. Mon.——Convocatis proceribus, cum id judicatum fuisset, assensum præbuerunt cuncti.

ⁱ Inito consilio quid agerent.

the assent, (as is affirmed,) of his “ publique councill of the realm.”

King Leyr married his daughters, “ by the councill of the nobles of his kingdome^k.”

Brute himself, (and we cannot goe higher in this island,) after his conquest of Pandraus and the Græcians, “ assembled the elders of the people^l,” to advise what to doe; and Mempricius, one of them, gave his opinion: that it were unworthy to kill a king for defending his own country, and right; that to stay among those, whom they had thus provoked, was not safe; butt that to demaund of Pandraus his daughter for a wife for Brute, with ships, and money, and provisions, and so to seek their fortune in some other countrey, was most advisable. To which councill, “ all the multitude did acquiesce^m,” and that councill was followed, and brought Brute and his company to this island, giving the name to it and its inhabitants. If there were “ a multitude,” there must be “ commoners;” and in those times there were hardly titles of honor, and nobility, known: and many of these publique councill were held before there was either bishops, earle, or baron.

By all the before recited passages, (which I with humility submit to others judgment,) it seems evident to me; that in all times of the Normans, Danes, Saxons and Britains, “ some of the commons,” or deputies “ for them,” were usually admitted to be parties, and members of their publique councill. Probably, sometimes, they might be omitted; but generally, were present in them: and both king, lords, and commons, in our parlements, are as antient, as the beginning of civil government amongst us.

^k Pont. Virun. Mat. West. Galf. Mon. Procerum regni consilio.
jores natu convocavit.

^m Tota multitudo acquievit.

^l Id. Ma-

C H A P. LXXXII

Of those citties and boroughs.

THE greatest part of the commonaltie is in the “citties, and boroughs,” where merchants, artificers, and tradesmen doe inhabite: the other part of the commonaltie is the gentlemen, and yeomen, their tenants, and farmers who till the land, and inhabit the country villages. All have their deputies in parlement; and it is just, and safe, to have it so. Nor are the commonaltie to be ignorant of this great priviledge, or ungratefull for it: every nation, and government, allowes it not. Butt the law of England is so equal, that it holds, “what concernes all ought to be determined by all:” and therefore gives this great priviledge to all lords, and commons, that no law shall bind them, butt unto which they give their assent, according to the petition of the commons to H. 5. in the old english^a.

“Our soverain lord, your humble lieges that ben come for the commonaltie of your lond, bysechyn onto your rizt wesnesse; that so as hit have ever be thair liberte, and freedom, that ther shold no statut ne law be made, of lasse that they yaff therto ther assent; considering, that the commonaltie of your londe, the which that is, and ever hath be, a member of your parlement, ben as well assentors as peti-

^a H. 5. rot. Parl. pt. 2. n. 10.

tioners," &c.--Which is a full prooffe of the antiquity of the commons in parlement; "ever a member of it!" The king by his answer grants, that "nothing be enacted that be contrarie of her asking, whereby they should be bound without their assent." Which assent is "by the deputies of the counties, citties, and boroughs, in parlement." Nor is this priviledge peculiar to the commons of this nation: the Hebrews did afford it to their commons; and other people, as well as we, have followed their precedent.

Jethroes counsell to Moses was, to appoint rulers of thousands, of hundreds, of fifties, and of tens^b. That these were elected, by the people, is gathered from that speech of Moses, where he repeats what he had done, and said, to them. "Take ye wise men, and understanding, and known among your tribes; and I will make them rulers over you^c."

Menochius gives the reason of this nomination of magistrates by the people: "because the manners, and wisdom, of those whome the people named, was best known to them; or because they would the better obey those, whom they desired to have judges over them^d." By this it seems cleer, that these officers were deputies of the people, elected by them; and some of them, at least, were of the ranke of the commonaltie: and that these were members of their publique councill appears by sundry texts. As in that where Joshua "called for the elders of Israel, and for their heads, and for their judges, and for their officers:" and where it is sayed, that David "consulted with the captains of thousands, and of hundreds, and with every leader^e."

^b Exod. xviii. 21. ^c Deut. i. 13. ^d Col. xxxviii. Quia ipsi magis notos habebant mores, et sapientiam, eorum quos nominabant; vel quia facilius iis erant parituri, quos ipsi moderatores habere optassent. ^e Jos. xxiv. 1.—1. Chron. xiii. 1.

Diodorous Siculus, speaking of the high priest, saith; that “ he pronounced the law in the congregations, and councells of the people^f:” it seems then, that the people had their deputies in those councells. Ruffinus affirmes, that the commonwealth of the Hebrews was att first under the power of the people: and the magnates, and princes of the people, in councell, do show their right to have a share in those councells, and transactions^g. We find in the sacred story often mention of “ heads of the people—chief of the people—governors of the people—princes of the people—the congregation of the people—antients of the people—the assembly of the people—rulers of the people—elders of the people—senate of the children of Israel—the chiefe of the fathers—princes in families—chiefe of the congregation—the congregation— all Israel—princes and captains—princes of the congregation—the senate of the people—the multitude—all the children of Israel—the whole congregation—princes, captains, stewards, officers, valiant men, chief of the children of Israel—the multitude of the disciples—the multitude^h;” and many the like expressions testifying, that some of the commons of the Hebrewes, as the deputies of the commonaltie, were admitted to have suffrage in their publique councells. More full is that passage, where king Jehoshaphat “ consulted with the people.” And where it is said, that “ the people of the land” slew all them, that had conspired against king Amon; and “ the people

^f L. 40. Hunc in populi congregationibus, et conciliis, ait edicta proferre.

^g Fuit autem respublica hebræorum primo qui—Magnates populi, principes populi.

^h Deut. xxxiii. 21. 1 Sam. xiv. 38. 2 Chron. xiii. 20. Neh. x. 14. Ps. xlvii. 9. & cvii. 32. Jer. xix. 1. Ezek. xxiii. 24. Lu. xxiii. 13. Acts iv. 8. Lu. xxiv. 20. Mat. xxvii. 1. Lu. xxii. 66. Acts v. 21. Lu. xix. 47. Exod. xix. 7. 2 Chr. v. 2. 1 Chr. iv. 38. Jud. xx. 1, 2. Jos. xviii. 1. & xxii. 12. 1 Sam. vii. 5. 1 Chr. xxviii. 1. 2 Chr. v. 2. Jer. xxvi. 11. Jos. ix. 18. Acts xix. 32. Jud. xx. 1. Jos. xviii. 1. & xxii. 12. 1 Sam. vii. 5. 1 Chr. xxviii. 1. 2 Chr. v. 12. Acts vi. 2. & xv. 12. 30.

of the land" made Jofiah his fon king in his stead¹. Which some understand "the deputies of the people," uppon publique consultation, and resolution, did those acts—which otherwise hardly could be done.

In the numbring of the people, it is said: "These were famous in the congregation, princes of the tribes of their fathers, and heads over thousands in Israel^k." Other versions say "captains, and governors," butt the Samaritan is expresse; "deputies of the people." God enjoynes Samuel. "Heare the voice of the people, whose elders, and deputies," made the demand of a king^l. That text also, "what shall then one answer the messengers of the nations^m?" who if they be taken as ambassadors of the gentiles, they were from the people of those nations, who sent them. And the Apostle speakes of "messengers of the churches," who were authorised by all the members, (the commons, as well as others) of the churchesⁿ. And when David consulted with "the captains of thousands, and of hundreds, and with all the governors;" there were some commoners of that number. So when he published the succession of his son, Solomon, whom the princes and men of power, and "all the congregation" made king^o. When the ambassadors sent from Jonathan, to Rome, entred into the senate, they said; "Jonathan the high priest, and the people of the Jewes, sent us unto you^p."

Bertram notes, that the government of those former times, (of the Maccabees,) had much of democracy in it: as by that passage before noted; and in that where Simon, the brother of Jonathan, gathered the people together, (in councill;) and they chose him to

¹ 2 Chron. xx. 21. ² 2 Chron. xxxiii. 25. ^k Nu. i. 16. ^l Sam. viii. 7.

^m Isa. xiv. 32. ⁿ 2 Cor. viii. 23. ^o 1 Chr. xiii. 1. — 1 Chr. xxix. 1. 22.

^p 1 Maccab. xii. 3.

be their leader, as his brother had bin^a; and in all the instances of the three estates, with them, fully appeareth.

The treaty about the cave of Macpelah between Abraham, and Ephron, was before the people; and they, parties to the agreement; att least counsellors, and wittneffes^r. Laban gathered together all the men of the citty, to consult with them, (as some hold,) about the marriage of his daughter, to Jacob^s. And Hamor, and Shechem, communed with the men of their citty, the cittizens, about their being circumcised^t.

Grotius notes, that amongst the Achæans the councill was constituted of "the deputies of citties". That Hippodamus made up the estates of the publique councill, of "artificers, husbandmen, and foldiers" or nobles^v. And Plato, of "soldiers, officers, and husbandmen^x". The Ægyptians also had "handycraftsmen" in their senates^y. In Hungary they had originally, "the commons" of their publique councill^z. The like in Denmark, where the "commissioners of towns, and citties," wer of their publique councill^a.

In France, Pasquier notes, that "the menu peuple" were brought in, to the end; that the kings might gett money from them, with the better contentment; and, by their owne consents^b. Surely enough they were brought in; and during the time that the three estates was held in France, the deputies of "the citties, and boroughs," were constantly members of them. And in all the commonwealths

^a p. 195. — 1 Maccab. xiii. 2.
xxix. 22.

^t Gen. xxxiv. 20.

ex legatis urbium constituebatur.

milites, agricolas.

in Dan. descript. Hist. rer. Dan. l. 7.

^r Gen. xxiii. 5, 6, 7, 8, &c.

^v De antiquit. reip. Bat. f. 2. Concilium

artifices, Agricolas, milites.

^x Bonfinius, Hist. Hung.

^z Recherches de la France, f. 81.

^y Gen.

^a Custodes,

^b Pontanus,

of Greece, and Rome, the members of the senates were “their cittizens.” So are the deputies of the imperiall citties, of Germany admitted to have place, and suffrage, in their diette. And the “commons” appeare to have been as antiently in their publique councells, as the time of Tacitus; who, (as is before noted,) speakes of councells wherein “all consulted;” that is the deputies of all the people: and he speaks expressely of those “matters, the determination whereof belongs to the commons.” In the citty of Luca they have senators, whom they call *ordinarii*, who continue for a year; and, *voluntarii*, who are obliged to no certain time; and such as are substituted in the places of those that dye: and all these are “commoners,” citifens of Luca^d.

The antient manner of the Swedes, and Goths, making their laws, was thus. Certain prudent, and knowing men of the laws, and state of the kingdome, did write them; then they were corrected by the senators; and after that publicuely read unto the people: and being approved by them, the king gave them his confirmation^e. And when the king's court was kept att Upsale, the people yearly mett there, in judgement; or “out of every territory, some deputed to represent the people: and though the king were president in the judgment; yett the right of giving sentence was with the people^f.” and from those times constantly, in all their ricksdaghs, “the deputies of the citties and boroughs, and of the boores,” have place, and suffrage there.

^e Ea quoque quorum penes plebem arbitrium est.

^d Gothofredus, l. 3. p. 657.

^e Antiquit. Sueo-Goth. Loccen. p. 55.

^f Ib. f. 59. Ex quolibet territorio

designati populum representabant. Et si Rex ipse presidebat judicio; tamen penes populum erat jus ferendæ sententiæ.

C H A P. LXXXIII

Severally from them.

THE commonaltie, in a joint body, are not capable of buisnes : that body is too great to move, and transact, perticular affayres. Charron had no good opinion of them, where he saith, that the people are inconstant, and variable, without stay, like the waves of the sea ; they are moved and appeased, they allow, and disallow, one and the same thing, att one and the same instant. “ It is (saith he) the custom of the vulgar, to despise the present, to desire the future, and extoll that which is past^a :” that they are light to gather, and believe newes, (especially such as is most hurtfull,) holding all reports for assured trueths ; that with a whistle, or ballade, a man may assemble them, like bees att the sound of a bason. Tacitus notes, that “ the common people have no judgement, nor trueth : that they judge many things by opinion, few by trueth^b.” And Salust censures them to be “ of a mutable disposition, seditious, contentious, desirous of novelties, ennemys to peace and quietnes^c.” The recompence of those who have deserved well of them, hath commonly bin banishment, reproach, or death. The

^a Of wisdome lib. 1. c. 52.—Hi vulgi mores ; odisse præsentia, ventura cupere, præterita celebrare.

^b Plebi non judicium, non veritas ; ex opinione multa, ex veritate pauca judicat.

^c Ingenio mobili, seditiosum, discordiosum, cupidum rerum novarum, quieti et otio adversum.

sacred story of Moses, and of all the prophets; and prophane stories of Socrates, Aristides, Phocion, Lycurgus, Demosthenes, Themistocles, and divers others, doe evince this truth. And Seneca notes, that “it goes not so well with humane affayres, as that the best things doe please the most; butt multitude is an argument of the worst^d.” If so, their consultations can hardly produce good effects, unlesse the wisest, and ablest among them, be chosen to consult for them; yett “severally from them:” nor can it be otherwise, or ever hath bin. It is true, that we often meet with the expressions of, “all the people—the universall councill—all the clergy, and laymen, did meet;” as hath bin noted in the 81 chapter: and that att certain times, att the wood, (holy by the augures of their fathers, and antient veneration,) “all the people of that lineage” doe use to meet. These expressions, of “all the people,” are expounded in this place where it is said; “they used to assemble by their deputies, severally from the multitude.” In like manner it is said, “by consent of the whole realme,” the measure was made; that is, “of the representatives of” the whole realme: and “the king, by assent of the bishops, &c. and all the commonaltie” hath ordained, &c; that is “the deputies of” all the commonaltie. And divers of the like expressions are to be found in our records, acts of parliament^e, and histories; where the word “all” is to be taken “all by representation and Deputation, severally from the multitude;” not “all individually,” who cannot possibly consult together.

In severall texts of the holy story, where it is said; “the people, all Israel, all the people, all the congregation, &c. did assemble:”

^d Non tam bene cum rebus humanis geritur, ut meliora pluribus placeant. Argumentum pessimi turba est.

^e 51 H. 3. Assisa panis et cervis. Stat. West. 1. 3 E. 1. 7 E. 1. 25 E. 1. 31 E. 1. 12 E. 2. Stat. Yorke. 1 E. 3. c. 1. 2 E. 3. c. 3. 4 E. 3. ft. 2. 15 E. 3. c. 1. 25 E. 3. preamble. 31 E. 3. preamb.

some

some expound the meaning thereof to be "every individuall person," men, woemen, and children, all the whole body of the people, mett according to that text; "your little ones, your wives, and your children" &c. And this opinion is followed by Abulensis, who saith; that by a divine power it was given to Moses, that his voice was so ordered, that all of that great multitude could heare him^f. And till we can believe the like of Abulensis his miracles to be wrought, we cannot suppose these generall meetings to be otherwise than by "deputies severally from" the multitude. Abulensis himselve confesseth the argument of those of a different opinion to be true; that all the people may be said to be present, when those who governe and represent them are present: according to that note of reverend Hooker; that "in parlements, councells, and the like assemblies, altho' we be not personally present, notwithstanding our assent is by reason of other agents there, on our behalfe."^g But if the opinion of Abulensis, in this point, should be held for orthodoxe, uppon that generall assembly of Deut. xxix. where indeed the text doth mention women and children: yett it is made a quære, how that conceipt, (which he brings a miracle to supporte,) can be extended to other generall assemblies where there be treaties, capitulations, proposalls, answears and determinations; which cannot admit of management by a confused multitude, butt by their deputies "severally from them." As in that excellent capitulation between Joshua, and the people, where he recounts the benefits of God to them, and the story from Terah till that time; exhorts them to fear the Lord; and with an holy eloquence telles them, if it seeme evill to you to serve the Lord, choose whom you will serve; whether, the gods which your fathers served, or the gods of the

^f Jos. xxiv. 1. Deut. iv. 10. Jos. xxiii. 2. 2 Ki. xii. 19. Deut. xxix. 10.—
Deut. xxix. 10, 11.—On Exod. xxiv. 4, 5. ^g Hooker's Ecclesiasticall policy
f. 74.

Ammorites:" and tells them plainly his own resolution; "butt as for me, and mine house, we will serve the Lord^h." To this an answer is made in the name of the people. "God forbid that we should forsake the Lord, to serve other gods!" and they give the reason of it, and conclude; "therefore will we also serve the Lord, for he is our God." Joshua replies, and expostulates againe with them: and the people conclude againe; "nay but we will serve the Lord." Joshua takes them att their word; tells them, "they are wittnesse against themselves:" they answer; "we are wittnesse against our selves." He adviseth them to putt away the strange gods, and to incline their hearts to the Lord God of Israel: the people say againe; "the Lord our God will we serve, and his voice will we obey. And Joshua made a covenant with themⁱ." These severall propofals, answers, debates, resolutions and covenants denote the transaction of that affayre to be by deputies of all the tribes and people, "severally from them," who altogether could not possibly effect the same. The same is noted uppon the agitation between the children of Israel, and the children of Reuben and of Gad, about the building of the altar; the whole congregation of the children of Israel gathered themselves together: butt yett they chose out, and sent their deputies; Phineas, and with him ten princes, of each chiefe house a prince, throughout all the tribes of Israel^k. So in the case of the Levite, and his concubine, it is said: then "all the children of Israel" went out, and the "chiefe of all the people," even of all the tribes of Israel, presented themselves.^l This seemes to be explained by that passage, when "all the tribes of Israel" came to David to Hebron; it is sayd v. 3. so "all the elders of Israel" came to the king, to Hebron^m. Wherby is

^h Jos. xxiv. i. 2. 14. 15.
 —v. 22.—v. 23.—v. 24.—v. 25.
 xx. i. 2. ^m 2 Sam. v. i. 3.

ⁱ v. 16.—v. 17. 18.—v. 19. 20. 21.
^k Jos. xxii. v. 14. ^l Judg.

expounded, that by all the tribes is meant the elders, or “ representatives of all the tribes :” for so the heads, and elders, were ; and, in the nature of “ deputies of the people.” So the hebrew worde, “ Shibte”, signifying “ scepters, roddees or staves,” signifies also “ tribes ” and the “ ensignes of authority.” And such as were so in authority and power as heads of the tribes, and families, were also impowered to be present att these publique councells ; and did advise, and conclude, in the name of all the people “ severally from them,” and to the oblidging of their right and interest. And surely every individuall man, woman, and childe, of all the tribes, can hardly be imagined capable of transacting in such propofalls, answers, debates and resolutions as appear to have bin in these, and other like publique assemblies of the Hebrewes. As in the busines of Rehoboam, and after the defection of the 10 tribes from him ; when he assembled all the house of Judah, with the tribe of Ephraim ; they are reckoned to be 80,000 chosen men^o ; yett they were not all of those two tribes, butt “ chosen men :” and if all the rest of those two tribes had mett with these 80,000 men, and with all the men, women and children of the other ten tribes ; every one will suppose the multitude to have bin much too great for such a consultation, and transaction, as we find related in that story : propofalls from the people to the king ; his answer ; their deliberation, and reply ; the king’s determination, and the people’s resolution ; which could not be acted by so vast a number of them. Butt the texts which mention “ all Israel—all the tribes—all the people—all the congregation,” and the like, are to be understood, a general assembly, or councill by “ selected persons out of all Israel,” by deputies of the people impowred^{by}, and representing all of them ; and “ severally consulting, and acting from them.”

And such a construction as this is made by Grotius, uppon that passage of Tacitus formerly noted: "of the smaller matters, the princes doe consulte; of the greater matters all doe consulte." Upon this, he saith "all is not so to be understood, as if every one leaving their houses, and all their family and dearest concernements, should come to those assemblies or publique councells; for that, in a great nation, could not at all be done: butt all are said to be that councill to which fitt men were sent, from all parts, and of all estates of the nation^p." In this sence the general assemblies, and councells of the Hebrewes, were called "all the people—all the tribes," &c. And in the same sence, in all nations, their general councells, and assemblies, are to be understood; and are so every where practised. The deputies of the people "severally from them," and representing them, doe meet, and consulte together for publique good and safety; and are impowred by their principalls so to doe; and to oblige the right, and interest, of those by whome they are elected, and intrusted, and whom they represent, for this purpose.

^p Grotius de antiquit. reip. battavicæ p. 13. De minoribus rebus principes consultant; de majoribus, omnes. Omnes non ita intelligendum est quasi singuli, tanquam ad comitia, convenerint, relictis laribus et focus; id enim in gente magna fieri omnino non poterat. Sed omnes dicuntur ipsum concilium quo, ex omni regione omnique ordine, idonei homines mittebantur.

C H A P. LXXXIV

To doe and consent.

IT is the great priviledge of the parlement of England, that every one of the members thereof hath the liberty of proposing, in that assembly, what he judgeth may be fitt for the publique good. He may "doe, as well as consent." He may complaine of any publique, or private grievance; and propound remedies. He may present petitions for others; or offer bills for repealing, or altering olde lawes, or for making new ones.

The like liberty of "doing, and consenting," we find to have bin in the generall assemblies, and publique councells, of the hebrews: as where all the elders of Israel propounded, to Samuel, the change of government^a. So when the men of Judah came, and annointed David for their king: and when all the tribes of Israel came to him to Hebron, and spake to him, and made a league with him, and annointed him king^b. The buifnes was different with his graundchild Rehoboam; but the proposalls were made to the king, by the generall assembly^c. Butt usually, in the holy story, we find the proposalls made to the publique councell; and their advice demanded in the matters so proposed. As in that of

^a 1 Sam. viii. 4, 5.^b 2 Sam. ii. 4.—2 Sam. v. 1, 2, 3.^c 1 Ki. xii. 21.

the Levite, and his concubine; when the assembly were mett, they are desired to consider of it, and to take advice^d. The like may be noted of David's proposall to the publique councill summoned by him; "if it seeme good unto you" &c: and when he propounded, to another generall councill, the succession of his son Solomon^e. Sometimes the prince propounds matters to the councill; and sometimes the councill, to the prince. The same is naturall, and usuall, in publique counsell: and requires not many notes. Only that persian antient councill, before noted, had not much "to doe, or consent" unto, in councill; when their emperor tould them: "it is your part, more to obey what I propound unto you; than to presume to offer your advice to me^f." And att this day from antient custome, among the Germans, and Swedes, when a publique council is assembled; the emperor or king, or their respective counsellors or some other officers, propounds unto the councill the matter whereupon the emperor, or king, requires their advice: and the proposall is delivered in writing to each state, to be by them considered; and their opinions, returned in writing upon that proposall. And none of the estates, nor any members of them, nor all of them together can propose any thing, in councill, butt upon the matter first proposed to them from the king; which matter, only, is the subject of their deliberation.

Upon some discourse with members of their publique counsell touching this point; whether it were not a great defect, and inconvenience to common right and justice, that the supream court and councill of the nation should be so tyed up, and restrained, that

^d Judg. xix. 30.^e 1 Chron. xiii.—1 Chron. xxviii. 1, &c.^f Vobis

magis parendum esse, quam suadendum.

they

they were not allowed to make any propositions of themselves, whatsoever the occasions of the commonwealth might require: but must be content to consider only what was propounded to them from the court, who were more studious of promoting that interest than any other; and did not usually so much consider the publique, or private grievances of the kingdome, as, the meanes how to advance their owne perticular advantages. And how could lawes, and enormities be reformed, and new provisions be made so well for the common good; when those who were trusted by the countrey, and best knew the defects, and how to remedy them, and what was most for the peace and good of the people, were not admitted to propound those remedies; and, such alterations of old, and enacting of new lawes as they, in their judgments, knew to be most necessary and suitable to the present occasions and exigencies of the commonwealth?

To this themselves answered; especially the statesmen in Sweden, where this order is more strictly observed. That the bounds of the king's prerogative, and of the people's rights, being cleerly stated by the law; and the way of recovery of perticular rights being sufficiently knowne, and provided for by their lawes already; they desire not any addition of new lawes, nor alteration of the old. That the multitude of lawes serves for nothing else butt to increase delay, expence, contention, and confusion: therefore they desire to content themselves with their old, knowne, certaine and few lawes; as most tending to their peace, and quiet. That their ricksdagh consisting of about 700 persons, most of them of active stirring spirits, and abilities, and apt to think well of their own conceipt: if liberty should be given to every one of these to vent their owne fancies, and apprehensions, without controule; they should find it difficult to bring matters to any
seasonable

reasonable effect, and conclusion; butt it would occasion great retarding of publique affairs, if not distraction, or confusion. That thereuppon they constantly pursue this order; that the ricksdagh propounds nothing to the king, butt sometimes petitions touching grievances; butt the king calling them together for their advice, they counsell him in what he propounds to them: and by this course they enjoy much more peace, and quiet, than otherwise they could expect to doe.

To this themselves answered; especially the statemen in two-
 gen, where this order is more strictly observed. That the bounds
 of the king's prerogative, and of the people's rights, being clearly
 stated by the law; and the way of recovery of particular rights
 being sufficiently knowne, and provided for by their lawes already;
 they desire not any addition of new lawes, nor alteration of the
 old. That the multitude of lawes serves for nothing else butt
 to increase delay, expence, contention, and confusion; therefore
 they desire to content themselves with their old knowne cer-
 taine and few lawes; as most tending to their peace, and quiet.
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 of them to vent their owne fancies, and apprehensions, without
 controule; they should find it difficult to bring matters to any
 reasonable

C H A P: LXXXV

To such matters.

WHAT these "matters" are appears afterwards: and it is no easy thing to enumerate them. Matters proper for the action, and consent of parlement, cannot be confined to number, or nature of them: the king, and all the lords, and deputies of the commons, joyning together may doe, and consent to, what they thinke fitt for the safety, and good of the people who have intrusted them.

The matters of parlement, proper for their cognifance, are such only as be of great weight, and consequence. Not every light and triviall buifnes, or complaint, is to be taken up by them; nor any matter, whatsoever, in which a remedy is given by the ordinary course of justice, which the parlement in their wisdom did not use to interrupt; but to referre such complaints, whereof remedy might be had by law, to the course of lawe: knowing themselves to be the directive power, not the executive power which remains, and by the law is given into the hands of the king, and his subordinate officers. And it is not safe either for king, or people, that both these powers should be exercised by one body, though a parlement, which considers of generall matters, complaints of misdemeanors, or wrong judgments in inferiour officers; what

conduceth most to the security, and welfare, both of king, and kingdome; what lawes are fitt to be altered, or repealed, and what to be new made; and all matters tending to the good, and safety, of the whole kingdome.

These matters have bin distinguished under three heads:

1. Matters deliberative;

2. Matters judiciall; and

3. Matters legislative.

I shall discourse heere of the first only; and to avoyd tediousness, referre the rest to other places.

Matters deliberative we find were the subject of our publique councells, as antient as the time of the Druydes: who used in Brittain, and in Gaule, to meet in consultation touching the publique affayres, and matters of state, of which "it was not lawfull to speake but in councill^a;" and there they might deliberate of all matters concerning the commonwealth.

The booke, called the Mirroir of justices, notes in the language of that time; that the king, and his companions, used to meet at London "to conferre, or deliberate together, about the government of the people of God^b." The authority of the Thanes, in the saxons Witenagemotes, consisted, among other matters, in advising, and deliberating, about the affaires of state^c.

^a Cæsar, Comment. 1. 6. c. 8, 9. De repub. nisi per consilium loqui non conceditur.

^b C. 1. Sect. 3. Pour parlementer sur le guidement del peuple de Dieu, &c.

^c 2 tit. hon. Seld. f. 632.

In the parlement called by king H. 1. the king of Scots is mentioned to have done his homage, to the king of England, upon consultation had "in the parlement chamber^d." But I correct myself from reciting instances out of our records, and histories, of matters deliberated upon in our parlements; which would oblige me to a recitall of all matters whatsoever the which, att one time or other, have bin in deliberation, (as they happened,) in that councell. As matters of war and peace; treaties, leagues; trade; matters relating to the church, and state; to the king's person, and his queen, and children, and to their particular estates; (upon which matters in parlement somewhat hath bin before noted.) Also, of ambassadors; of arbitrations from forrein princes; sea affayres; and generally of all matters relating to the good, and safety, of the kingdome. And indeed of all matters of what nature soever, wherein att any time it pleased the king to require the deliberation, and advice, of his parlement. Nor can these matters deliberative be naturally restrained, or be perticularly recited, without too much enlarging this volume.

The seaventy elders of the children of Israel, in Ægypt, before the institution of the sanhedrim, were officers among them for counsell and deliberation only. And when the sanhedrim was instituted, those senators were indowed with the spirit of prophecy. It is credible, (saith Menochius,) that they consulted God, for Moses; and answered the people: the best way of deliberation, for a publique councell.

The perticular matters deliberated upon, and within the cognifance of this great councell, are enumerated by Schiccardus to be of

^d 6 E. 3. rot claus. m. 4. dorso.—In Camerâ parliamenti. ^e Grotius, ad Num. xi. & in Mat. v. 22. & in Luc. x. Paul. Fag. in Num. xi, 16. præerant consilio tantum. Menochius, de repub. Hebræor. l. 1. col. 3.

great moment. Touching religion, and the commonwealth; of legall controversies; of the bissextile yeare; of false prophets, of apostates, of persons to be excommunicate; of affayres touching the king; of warre, of leagues, of ambassadours; of taxes, of publique building, and of inferiour magistrates: the very matters properly deliberated uppon in our parlements. So were they in the great sanhedrim; and, in the other generall, publique councells of the Jewes^f,

Aristotle, speaking of matters deliberative in publique councells, faith; that the Lacedemonians did not use to consult, whither the Scythians had the best forme of a commonwealth; bicause it did not concerne them: but, (faith he,) we use to deliberate of things to be done, and in our power. And "that which the kings thought fitt, they did referre unto the people;" that is, to the publique councells of the people; to be deliberated on by them. That men, having first proposed an end, doe then consulte, and deliberate, of the wayes and means to attaine that end^g. Man is the beginning of action; and councell, and deliberation, is of those things which may be done by man: not of the end; butt of those things which tend unto it. Such matters are concerning aids, and taxes, and the safety of the commonwealth.

The matters deliberated uppon, by the roman senate, were the same before noted; and are said to be all "things pertaining to the commonwealth^h." And the generality, of their deliberative power, may be fully seen by any, who thinke necessary to consulte their authors for it.

^f Schiccardus, Jus reg. Hebræor. cap. Electio p. 9. Maimonides, c. 5. p. 7.

^g De Moribus. l. 3. p. 39.—οἱ γὰρ βασιλεῖς αὐτοὶ προέλουντο ἀνῆγγελλον τῷ δήμῳ—
Arist. polit. l. 4. p. 509. & l. 2. p. 193. ^h Dionys. l. 2. Polyb. l. 6. In
negotiis ad Rempub. pertinentibus.

In France the druydes used to assemble in diettes, or publique councells, for the dispatch of affayres of greatest importance, and concernement to Gaule; which were the matters deliberated on by them. And in the first parlements, the king, by their advice, "gave answers as well to the complaints of their subjects, as to ambassages¹." Thuanus recites the matters, deliberated upon by those publique councells in France, to be: "to take care of the church discipline; and that the king might heare the complaints of his people; and that mutually with his subjects, as called together in councell, they might act, concerning the necessities, and inconveniencies, of the kingdome." He mentions also their deliberation touching the king's majority; and their declaring thereof, att his age of fowerteen years^k. That in these assemblies before the king, as in a free auditory, and supream councell, the people's grievances were heard; the necessities of the kingdome; the correction of the abuses of soldiers; reformation of justice, and manners; and "to conclude, all things necessary to the conservation, and tranquility, of the kingdome¹."

The councells deliberated touching the homages, and fealties, of strangers, princes; and, received the same. Which is also testified by our english historians; and more particularly in the case of our king E. 3. The affayres of justice, of war, of peace, and of the renew, were there deliberated, consulted, and resolved; the people's grievances were heard, deliberated upon, and remedied;

¹ Pasquier, *Recherches de la France*, p. 7, f. 42.—Donnoient responses tant aux plaintes de leur subjects, qu'aux ambassades, &c.

^k Thuan. l. 27. Ut sacræ disciplinæ prospiceretur; rex suorum querelas audiret, ac vicissim de regni necessitatibus, et incommoditatibus, apud subditos suos, quasi in concilium advocatos, ageret. Lib. 34. f. 205.

¹ Honorius de regno Gal. f. 637. Demum de omnibus rebus necessariis ad regni conservationem atque tranquillitatem.

and there "they spake freely, and deliberated uppon all matters as well generall, as perticular^m."

In the german diette the same matters were deliberated uppon, as in other publique councells. In that of Ausburgh, is said: they deliberated, and consulted, about the continuance of the councell; of the observation of the decrees already made; "of repressing traitors; of constituting jurisdictions; of restoring holy goods, usurped in the time of warre". In the diet of Ratisbone they deliberated uppon the demolishing of the castle of the Gothes, as being a receptacle of seditious persons, and traitors. And in several other of their publique councells are recited to be deliberated uppon, by them, matters of all sorts, both ecclesiasticall, and temporall; religious, civill, and military matters; and, of the greatest consequence: as "of the equall administration of justice; casting away the intricate circumstances, and trifling delays, of suits;" which I perticularly note, as worthy the imitation of our parlement^o.

In the publique councells of the Netherlands, their countryman, recites the same matters to be deliberated uppon by them; and perticularly, of the bestowing of offices, that they should not be given to foreiners; about their owne meeting in councell: and that by their deliberations, "sitting att the helme, they doe governe with much wisdom the ship, in which the provinces" are as it were in tranquility carryed^p. And "with these, (saith their au-

^m Haillan, de l'estat des affayres de France f. 180.—ibid, On parloit liberement de toutes affayres, tant des generaux, que des particulieres.

ⁿ Thuanus, l. 6.

f. 131. De perduellionibus compescendis, de jurisdictione constituenda, ac bonorum sacrorum belli tempore usurpatorum restitutione.

^o Thuanus, l. 45. f. 936.

De jure æquabili administrando, rejectis litium flexuosis ambagibus ac tricis, de &c.

^p Grotius, de antiquit. reipub. battavic. f. 35, 36, 42.—Hii gubernaculo affidentes navim prudentiâ summâ regunt, in quâ provinciæ, &c.

thor,) making a supreame, and most holy colledge, is the deliberating, discussing, and determining" of matters concerning warre, and peace; and which are of the greatest consequence^r.

In Transylvania the senate deliberates about the election of their prince; and, all other matters of moment. So they doe in Luca; and, of the creating of all other magistrates^r.

The Swedes, in the ricksdagh, deliberate on all matters which are proposed to them by the king; butt, no other: wherein though their transactions, and consultations, doe seeme to be restrained; yett, (as hath bin noted,) themselves are senceible, that therby the more quiet, and freedome from trouble and contention, is injoyed.

^r Penes hos, supremum quoddam sanctissimumque collegium statuentes, tractatio, discussio, diffinitioque. Gothofred. l. 2. p. 392. Lib. de Princip. Ital. p. 145.

C H A P. LXXXVI

Which then, and there,

THE power of the members of parlement is only to be exercised by them, "then and there;" when they are assembled together, as a parlement: a collective, and representative body, of the whole kingdome, mett together. They have no power, or authority singly, or severally, and distinctly: butt, "then and there," when they are together as a parlement. And being thus together, and during this "then and there," great honour, esteeme and reverence, hath bin given to the parlement; and, to all publique counsellors: and likewise during this "then and there," whilest the parlement is in continuance, perticular honor, and priviledges, are allowed by our law unto all the members, severally, therof. As is likewise given, to the respective members of publique counsellors, in other countries.

To begin with the generall honor, and esteem, afforded to them, as a collective body. It must be graunted, that some of our parlements displeasing some sort of the people, or att least the writers of their transactions, have not escaped reproaches. As that publique counsellor, in the time of the saxon king Etheldred, which gave a tribute of 10,000l. yearly to the Danes, to purchase a peace of them, is called "the unhappy counsellor:" and the reason thereof

* H. Huntington, l. 5. p. 357. Brompton, Col. 879, &c. Infaustum concilium.

is noted to be: bicause this was the first taxe imposed on the people; than which nothing gives more distast unto them. Walsingham writes severely of a parlement in H. 4. time, calling it "the parlement of unlearned men^b;" bicause the lawyers were, by the king's writ, excluded att that time, against common right. Which the other members of that parlement, and generally the people, tooke in ill part: and the more, in regard that the lawyers, of that time, were thought to be in displeasure with the great men, bicause they opposed oppreffions; and were zealous for the publique, and legall, rights.

Speed saith, the parlement held att Coventry was called the lack-learning parlement; either for the unlearnednes of the persons, or for their malice to learned men^c.

The monke also writes very sharply of a parlement in H. 5. time, where he saith: that "the knights of the parlement, (or as we may more truely say,) the soldiers of Pilate, malignantly sett; not studying any good to the kingdome; only having leisure for one wickednes, that they might spoyle the church of God throughout England &c^d." The reason why the monke was so angry with this parlement was, bicause of a proposall there made, which touched his owne freehold, for the dissolution of monasteries. Another was termed "the madde parlement^e;" bicause of the wilde, and strange, things done by them. Butt notwithstanding these reflections, and dishonors, cast uppon some few of our parlements,

^b F. 371. 30. Parliamentum indoctorum. Walsingham.

^c Speed, hist. f. 379. p. 42.

^d Walsingham, f. 379. Milites Parliamenti, vel, ut dicamus verius, Satellites Pilatis, in maligno positi; nulli commoditati regni studentes; ad unum solummodo scelus vacant, ut ecclesiam Dei per Angliam spoliarent, &c.

^e Parliamentum insanum.

from a discontentednes att some of their actions : yett, generally, we find a very great honor, and esteeme, of them among the people, as the defenders of their liberties ; and the bullwarke between their rights, and all designes of oppression. Our historian speakes of a parlement held at London, “ commonly called the good parlement.” The same title is given to another parlement, by our records of parlement ; and, remembred also by our historians. Another is stiled “ the great parlement ;” by reason of the extraordinary numbers of the peeres, and their retainers^f.

Plowden saith of our parlements : that it is a court of very great honor, and justice ; of which none ought to imagine any dishonorable thing^g. And the doctor and student saith ; that it cannot be thought, that a statute that is made by authority of the whole realme, as well of the king, as of the lords, and commons, will receive any thing against the trueth, and right.

Fortescue saith ; that the statutes of England are enacted not by the will of the prince, butt by the assent of the whole kingdome ; whereby no hurt can be, by them, done to the people, or their good not procured^h. Also it is to be esteemed, (saith the chancellor,) that they are full of prudence, and wisdom : when they are framed not by the wisdom of one, or of 100. experienced men ; but, of more then 300. of them. Martin saith ; that in the parlement the lawes, being made by the consent of all, cannot be disliked of any. Agreeable wherunto is Speed, and other writers. And the lord Ellesmere instructs us ; that parlements

^f Ypodigma Neustriæ, f. 530. 20. Quod bonum, à vulgaribus dicebatur. 50. E. 3. rot. Parl. Walsingham, f. 200. 1. Speed, f. 706. f. 739. p. 102.

^g Plowd. Coment. f. 398. b.—S. 55. 164.

^h De Laudib. Leg. Angliæ,

4. 18.

ought to be obeyed, and reverenced; butt their authority not disputed¹. Minshew calls it "a court of all others the highest, and of greatest authority." The like is said by judge Vavasor, in the language of those bookes; that the court of parlement is the highest, and most worthy, court that the king hath^k. The saxon name, of "an assembly of wise men," shewes the honor, and esteeme then had of them. And Coke saith; that in the politique body, when the king, and the lords spirituall and temporall, knights, citizens and burgeses, are all by the king's commaund assembled; and joyned together, (as "then and there" they are,) under the head, in consultation for the common good of the whole realme; there is, (saith he,) "the chiefeft, and fullest wifdome," and prudence^l. And in the case of Ferrers, 34. H. 8. the king saith to the parlement, "We be informed, by our judges; that we, at no time, stand so highly in our estate royall, as in the time of parlement^m." So great an esteeme was had of them, that many petitions of the commons, and fundry statutes, have bin made for the holding of parlements once a yeare; or oftener, if need be. And no great matter was undertaken without their advice; as hath bin elsewhere noted, with the 280 sessions of parlement,^{*} since the time of duke William. The like expreffion, and esteem of them, is also made in the act for the trienniall parlementⁿ. And the affections of the people to them, both heer and in Scotland, appears in their taking part with them, in divers of our unhappy, civill diffentions, in this kingdome: the repetition where-

¹ Hist. f. 21.—Speed, hist. f. 458. pl. 35.—Case postnati, f. 109.—Verbo, Parlement.

^k 7 H. 7. f. 14. lib. rep. Le court de parlement est le plus hault et digne court que le roy ad.

^l Writena gemotes—4. Instit. p. 3.—Ultimum sapientie.

^m Holinshed Chronicle, f. 1584. Dyer. f. 275. Crompton, Jurisdic. of Courts, f. 10. b.

^{*} Lord Coke says, "about 300:" which is not contradicted by Mr. Prynne, vid. 4th Inst. p. 50. Edit. 1644. (M.) ⁿ 16 Car. 1.

of is not pleasant; butt the stories of those times afford examples of them.

When the members of parlement are mett together, "then and there," ought to be no force; all should be in a peaceable, and civill posture. That they ought so to come, to the parlement, hath bin before noted, c. 84: that they ought so to continue "then, and there," is also the law and priviledge of parlement; both for the members thereof, and for their servants. Which appears by the case in H. 4. time^o, when one Savage wounded Richard Chedder esq; menial servant to Thomas Brooke, one of the knights chosen for the county of Somersset; the parlement ordeined: that, seeing the same horrible deed was done within the time of the said parlement; that proclamation be made where the deed was done, that John appeare, and yield himselfe in the king's bench, within a quarter of a year after the proclamation; and if he doe not, he shall be attainted of the deed, and pay to the party grieved his double damages, to be taxed by the discretion of the judges of the said bench, or by inquest if need be; and also he shall make fine, and ransome, att the king's will. Moreover it is accorded, in the same parlement, that likewise it be done in time to come, in like case.

This mischiefe increasing; and many parlement men, and their servants, assaulted; and hurt done, whilst they were attending "then, and there," in their service of the parlement: a generall statute was made, in H. 6. time, to prevent, and punish this offence; and is to this effect^p.

"The king, willing to provide for the ease of them that come to the parlements, and councells, of the king by his commaunde-

^o 5. H. 4. c. 6.

^p 11 H. 6. c. 11.

ment, hath ordeined: that if any assault, or affray be made, to any lord spirituall or temporall, knight of the shire, cittisen, or burgesse come to the parlement, or other counsell, of the king by his command; and there being, and attending att the parlement or counsell: then proclamation shall be made in the most open place of the town, three days, where the assault shall be made; that the party yield himselfe in the king's bench, within a quarter of a year after, if it be in terme time; if not, then the next day in the terme following; and if he doe not, then to be attainted of the deed, and pay to the party grieved his double damages, to be taxed by discretion of the justices, or by inquest, if it be needfull; and to make fine, and ransome, att the king's will. The like if he be found guilty by inquest, by examination, or otherwise, of such affray or assaulte."

In the same king's reign one Johnson, a member of parlement, being stricke by M. M. the offender was committed to prison: Johnson being, of record in chancery, returned a burges, and the offence being against the whole parlement, whose peace was thereby disturbed. But otherwise it is of a servant; for then, notice must be given^a.

In king James his time, the earle of Berkshire was committed to prison, by judgment of the lord's house, for striking att the parlement^b.

The wisdome of the parlement hath bin always tender of this point, to prevent assaults uppon their members; whereby would insue breach of the peace, disabling of their members, to per-

^a 8 H. 6. rot. parl. n. 57.

Coron. f. 33.

^b 18 Jac. Journall Ld's House Stamf. pl.

forme their service, and an interruption of the parlements proceedings. And to prevent any thing tending that way, the least provoking words, ("then, and there" spoken,) from whence commonly doe arise assaults, and blowes, are to be forborne; or, severely censured. And when the parlement have perceived debates to grow high, and threats to be given; they have caused the judges of the king's bench to bind the parties, though members themselves, to the peace and good behaviour: as, among others, was done in the case of Gilbert Talbot, who came into the king's bench, "by the advice of the great men, and others of the king's counsell, being in parlement;" and by reason of the debate between him, and the prior of Roucestre, he was bid to find suerties for his good behaviour; and fower knights were his manucaptors, that he should well behave himselfe towards the king, and his people, and chiefly towards the said prior, his men, tenants, and servants; and that he should not doe, nor procure to be done, by himselfe or any other, to the said prior, his men, tenants, or any of them, any damage or wrong, by threats, assaults, beating, or any other manner, to the hurt or disturbance of the king's peace. In like manner, the prior, by command of the court, was bound with fower suerties, to the same conditions; the principalls, in 1000l. a piece; the suerties, in 100l. a piece. By which precedent, the great care of the parlement is seene, when they are mett together, to prevent any interruption of their proceeding by any breach of the peace.

In like sort they are also carefull for the appearance of their members, "then, and there;" and for their not departing thence

* In Banco Rs. 1. R. 2. rot. 1. Angl. Per avisamentum magnatum, et aliorum de consilio domini regis, in presentis parlamento existent.

without licence. The modus parliamenti, so much controverted for the authentiquenes of it, saith : that the first day of the parlement the burgesſes, and cittizens ſhall be called, of all England, and if they appear not, the borough ſhall be amerced 100 marke, and the citty 100l; the ſecond day, the knights ſhall be called, and if they come not, the countey ſhall be amerced 100l. Butt every one knowes, by experience, that att the " then, and there," the time, and place appointed ; on the first day, all the members are called, and the defaults recorded.

It ſeems, that the members of parlement were not ſo forward to appear, in R. 2. time^t, as, in other times ſince : which occaſioned the ſtatute to be made, (before noted,) requiring their appearance on payne of amercement, or other puniſhment. It hath bin conſtantly practiſed, as an undoubted priviledge of either houſe of parlement, (when they find their members thinne and the buiſnes great,) to appoint a day for calling of the houſe ; when ſuch as appear not, without reaſonable excuſe, are fined. Uppon ſome occaſions, the appearance of members hath bin diſcharged, for ſome time^u.

In the great caſe of the biſhop of Winton, judge Sharde ſaith : that if one of the peeres doe not come, it is a trespas againſt the peers ; as well as, againſt the king^w. Uppon the ſame ground it is ſaid : that if a lord departe from the parlement, this is no treason, or felony ; butt, a trespas. And ſo it was held by the judges, in the biſhop of Wincheſter's caſe^x.

^t 5 R. 2. c. 4. Stat. 2.

f. 20. a.

Stanf. f. 153.

^u 3 Eliz. Dyer. 203. H. 32. Eliz. in B. R.

^w Fitz. Coron. tit. 161.

^x Stanf. placit. Coron. f. 38.—

A statute provides; that none shall departe the parlement without licence to be entred, of record, in the clerk's booke, uppon payne to loose their wages: which would be no great payne in our dayes^y.

Sometimes the king hath given, by patent, a discharge of attendance in parlement. Oure king E. 1. excused himselfe for not appearing att the parlement in France. A bannaret shall not be forced to appeare in parlement. None shall depart from parlement, without licence. And divers the like passages are obvious in our records, and stories; as the case of the information in the starre chamber against 39 of the house of commons, for departing without licence, contrary to the king's inhibition in the beginning of the parlement^z. The result of many of them shoves the care of the parlement, to keep their members present; and, the duety of the members to be "then, and there" present. And how any one can satisfy his owne conscience, to be att some pastimes, or worse intertainement; and to neglect his attendance upon so great a trust, as to be a member of parlement; I rather leave it to themselves to judge, than I shall passe any censure on them: butt rather humbly putt them in minde of their dueties of attendance "then, and there," in the great, and necessary, service of their king, of themselves, and of their countrey.

We may now looke into the honor, and esteem, of publique councells in other nations: and as the patterne to the rest, we may beginne with those of the Hebrewes, which were generally con-

^y 6 H. 8. c. 16. Co. 4. Instit. f. 43. ^z Lib. special. de Noy, MS.
 f. 21. b. 2 tit. hon. Seld. f. 750. 3 E. 1. rot. parl. m 1.—2 tit. hon. Seld. f. 355,
 356.—2 E. 3. 62. b. Stanf. plita Coron. 153. 5 Car. Cam. stellat. M. 3. & 4
 P. & M. rot. 36. inter plita Rs & Regin. Coke. 4. Instit. f. 44.

stituted of elders, the title of highest honor among them: and in other countryes, as hath bin before, in parte, noted. Universally, great honor was attributed to public counsellors, and a very high esteeme was had of them: and that, partly by reason of the ample power, and authority, of those counsellors, which draws honor and esteem to them; and bicause of the wisdom, prudence, courage, interest, and abilities of the members of those counsellors, and their actings accordingly; and the generall good thereby to all those for whom they act, in redresse of their grievances, in doing them right, in punishing oppressions, and enacting lawes for the generall good, and safety, of all the people. Therefore is the allusion made unto the text, in the canticles, “thy belly is like an heape of wheat:” which, it is said, alludes unto the Sanhedrim; bicause, as all men live by wheate, so every one hath benefitt by publique counsellors^a.

The state, and authority, of the Jewish sanhedrim is some argument of the honor given to them; and, the full, and free, obedience of all the people to their decrees, and judgments. Moses desired such assistants; and part of his spirit was communicated to them, and they prophecyed^b. He honored them by frequent consultations with them. His successor Joshua, the judges, the best and wisest of their kings, David, Solomon, Hezekiah, Jehosaphat, and the rest did honour them: so did all the people, who received benefit, and good, by them. And to recite the texts, and places, declaring the same, would take up too much time in a point so full of cleerness; and so obvious to all, who are conversant in the holy story. It is true, that Rehoboam did not esteeme the councill

^a Cant. vii. 2. Maimon. in tit. Sanhedr. c. i. 11. 3. R. Eleazer. R. Zadock & c. 8. Sanhedr. & Dabill. Sol. 36. 2.

^b Numb. xi. 25.

of the old men, or elders: butt forsooke it^c; and denyed the petition, and propofalls, which the publique councill of the nation, then affembled, did, by their deputies, make unto him. Butt the issue thereof appears in the story, to be; that therby he totally lost the kingdome of Israel, from himselfe, and his posterity.

The græcian senates, especially that of the Areopagitæ, had so great a veneration; that it caused the expreffion of Cicero formerly noted: “to deny, that this world is governed without providence, is as if a man should say; that the Athenians were to be governed without the councill of the Areopagitæ.” Which argues esteeme enough of them: besides, their titles, powers, and the obedience yielded to their determinations, are all arguments of the honor and esteeme afforded to them.

The like was given to the roman senate. And although, in some suddain accidents, and tumults, when the seditious, (who best like no government att all,) would reproach the senate, and seduce many of the people into mutinies; yett those being appeased, the honor, and obedience to the senate, presently returned.

Rofinus hath this expreffion of the Roman senate. “The supream councill, (saith he,) of the citty of Rome, was the senate: of which when Cyneas was asked, by Pyrrhus, what he thought, he answered; that it seemed to him, that he saw an assembly of kings.” So much honor gave he to that councill^d.

The princes of Germany, when they meet in their diet, have great honor given to them. Which must needs be, when so many

^c 1 Kings, xii. 10. ^d De antiquit. Rom. p. 369. Augustum urbis Romæ concilium senatus fuit; de quo, cum Cyneas à Pyrrho interrogatus esset, quid sibi videretur? respondit; arbitratum fuisse, videre se concessum regum.

of them, members of that councell, are free princes; and have regall power themselves within their respective territories. Whence the emperor Maximilian was wont to glory; "that he alone, above all other governors of the earth, was king of kings:" meaning the free princes, members of the german diette. "Nor was Charles the fift different, when he professed himselfe to command kings in Germany". So great honor and esteeme was given to those publique councells! The like was given by the Gothes, Swedes, Arragonians, Sicilians; and generally, by all nations. A thing so naturall, and universall, that I forbear to dilate uppon it: yett hath it mett with opposition, (as what doth not,) with some. Pasquier, speaking of the archbishop of Vienne advising to call the assembly of estates, as a remedy of the present evils, publisheth his censure: "that it is an old folly, which runnes in the spirits of many wise french men, that there is nothing which can so much comfort the people, as those assemblies; whereas, (saith the advocate,) there is nothing which procures more wrong unto them". Butt this is only one doctor's opinion; and that without any reason, precedent, or authority alledged to confirm it. His countryman Du Haillan differs from him; and hath more honor for the publique councells of his nation, where he saith: "it is a thing full of wonder, that as soone as any ordinance hath bin published, and veresied, in the parlement; sodeinly the people of France doe adhere thereunto without murmuring." So great an honor they

* Pourmeist. l. 2. de Jurisd. c. 1. n. 28. Kirchner de—Se solum præ reliquis terræ dominantibus regem esse regum Nec diversum Car. 5. judicium fuit, quo se in Germaniâ regibus imperare profitebatur.

† Pasquier lettres f. 146, 147.

C'est une vielle folie, qui court en l'esprit des plus sages Francois; qu'il n'y a rien qui puisse tant soulager le peuple, que telles assembles: au contraire, il n'y a rien qui luy procure plus de tort.

have for their publique councells ! He further calls that assembly, “ the corde which fastens the obedience of the subjects to the commaunds of their prince.” He proceedes in the commendation of them ; that the people, by the benefitt of the said estates, “ then, and there,” mett together, doe receive much good. And therof he gives the reason : “ for, (saith he,) this is the time of having accessse to the person of their king, to make their complaints to him ; to present their petitions ; and to obtaine fitting remedies.” Then he recites the objections against these councells : that by calling the estates the kings diminish their power, to take the counsell of their subjects, not being therunto obliged ; and therby render themselves too familiar with their people ; which begetts contempt, and doth abase the royall dignity. Butt he concludes. “ These would make our kings (saith he) tyrants, who have found no other remedy for their affayres, when they have had occasion for money and succors ; nor our people, other remedy for their calamities, butt by calling of the estates ; who have always bin the soveraigne medicine both of king, and people^e.”

With this honor, and commendation of that publique councill agrees Thuanus, where he saith. That least the riches of the kingdome, and the publique treasury, should be exhausted, and

^e Haillan, de l'estat des affaires de France, f. 182. b. Pleine de merveille, que deslors que quelque ordonnance a esté publiée, et verifiée au parlement ; soudainement le peuple françois y adhere sans murmure. f. 282. Le lien, qui nouast l'obeissance des subjects, avec les commandemens de leur Prince. F. 186. a. Le peuple, par le benefice des estats, recoit de grands biens. Car il a cest heur d'approcher de la personne de son roy, de faire ses plainctes ; luy presenter ses requestes ; et obtenir les remedes.

Haillan supr. f. 186. a. Mais ceux la voudroient faire tirans nos roys : qui n'ont-trouvé autre remede à leurs affaires, (l'orsqu'ils ont eu besoin d'argent, et de secours ;) ny nostre peuple, autre remede à ses calamitez ; que la convocation des estats, qui a tousjours esté la souveraigne medecine des roys, et du peuple.

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therby a free nation be burdened with the collecting of taxes, and contributions: "the assembly of severall ranks, which the people call the Estates, was most wisely instituted;" where the complaints of all being heard, supplyes are provided, and remedies for the burdensome evils of the people^b.

I am now brought to perticulars touching the honor, and privilege, of members of both houses of parlement which, at this "then and there," their being mett together about the publique affayres, is allowed unto them by our lawes. And first of the members of the house of lords, who by reason of the eminency of their dignity, and estates, and being borne counsellors, are obliged to attend the king in all his councells, when required by him: therefore they doe constantly injoy great honor, and priviledges, att all times; butt chiefly ("then and there") in the time of parlement. This is amply testified by our records, and bookes of law, and histories: some of the authorities therof, I hope, will be held not impertinent, or unusefull to be here inserted.

Bracton writes of them, that in his time, the barons and baroneffes were not putt to make oath. And in a parlement of E. 3. a week's time was spent on this point; that the nobles of the land should not be putt to answer, butt in open parlement, by their peers: which was thereupon enactedⁱ. So it was for a peere of Ireland, in a parlement there: butt heere he cannot be tryed by his peeres, bicause he is not a subject of England^k. Coke reports a resolution of the judges; that the person of a baron, who is a peere of parlement, shall not be arrested in debt, or trespas, by his body: for

^b Thuanus l. 23. f. 470. Ordinum conventus, quos vulgo regni status vocant, prudentissimè institutos &c.

ⁱ Bracton f. 351. b. §. 2. Barones, et baronissæ, non affidabunt. 15 E. 3. rot. parl. n. 6.

^k Dyer. f. 318.

none of the nobilitie, who is a lord of parlement, and by the lawe ought to be tryed by his peeres, shall be in such cases arrested by his body¹.

In debt, or trespass, a *capias* lyes not against an earle, baron, or baronesse: for by reason of their estate, and dignity, they are intended to have sufficient^m.

Ralphe Everden brought a writ of the chancery, and a privy seale, to the justices; reciting, that he was a baron, and commaunding them to discharge him from being sworn into any juries, or assises, according to the priviledge of a baron: which was theruppon done accordinglyⁿ. In an attaint, one of the grand jury challenged himself; bicause his auncestors had been barons, and lords of parlement^o. Fortescue gives the rule. "We cannot allow it, without a writ testifying it; for we ought to be certefyed, by matter of record, of your challenge:" which the court agreed. And it is to be noted, that duke or not duke, earle or not earl, baron or not baron, shall not be tryed by the countrey, butt by the record. An exigent lyes not against an earle^p.

To a writ directed thus; "command John Lovell, knight &c." the defendant demaunded judgment of the Writ: for this John Lovell, knight, is a lord, not named. This was not allowed. 1. Bicause he ought to have pleaded, that he was a baron of parlement: and that the worde, dominus, is too generall. 2. If he had done so he ought to have shewed a writ under the seale, testifying the same; for (saith the booke) "that is tryable by record only^q".

¹ 6 rep. f. 52. 59.

Stat. 14 H. 6.

^m 11 H. 4. f. 15. 3 H. 6. f. 48. 48 E. 3. f. 20.

ⁿ 48 E. 3. 30. Reg. f. 179.

^o 39 H. 6. f. 46.

^p 14 H. 6. f. 2. Newton.

^q *Præcipe Johanni Lovel, militi &c.*—8 H. 6. f. 9, 10.

Severall authorities, in our bookes of law, doe testify; that every baron ought to have a knight returned of his jury.

A capias for a trespass of the forest, wherof one is indicted, doth not lye against a peer. No subpcena, or attachment, lyes against a peer. The sheriffe ought to return great issues uppon him. Uppon a capias pro fine, he shall not be in execution by prayer. Most of their priviledges are collected by judge Dodderidge, in his booke of nobility; and where they shall not have priviledge^r.

An utlary was reversed for error; bicause by the common lawe no exigent lyes against a peere, in common, and personall actions: and the earle of Warwick, against whom this exigent was awarded, is a peere of the parlement; and is named a peere of the realm, in the writ^r.

If a capias be awarded against a peer, there shall be a certiorari to remove the recorde, and to make such proces as ought to be. Butt a capias lyes against a peer uppon a rescous. And the justices may award an exigend, or distresse infinite, against a baron of parlement; and there must be a writ to certify, that he is a baron. And all nobles, that are barons, ought to be so named in the writ.

Beauchamp was the first baron by patent: since which, baron, or not baron, is tryable only by record; and not, by the countrey. Whereas antiently, when their revenew and possessions gave the name, or made them barons; it might be tryable by the country^r.

^r 13 E. 3. Inquest. 44. 27 H. 8. 22. 4 El. Dyer. 208. 14 El. Dyer. f. 107.
 111. 18 E. 2. Iter Pickering, in lib. Tate MS. f. 15. H. 10 Jac. C. B. f. 2.
 Dodderidge, nobility MS. f. 43, 48, 49, 52, 58, 59. P. 1. H. 4. rot. 8.
 coram rege. ^t Fitz. nat. brev. f. 247. c.—1 H. 4. f. 15.—36 H. 6. Exigend. 2.
 —Dodderidge, nobility, f. 16.

A capias was held to lye against a barron, uppon a contempt.

If the party were not an earle, att the time of the writ purchased, which doth not name him so, it shall not abate: otherwise if he were a lord att the time of the writ, he must be so named^u.

In a challenge, the forme is: "Edward Hastings knight, lord Hastings," challenged; bicause he was one of the great men and peers having place, and voice, in parlement^w.

In a case in chancery against the lord Clinton, he was ordered to answer within a weeke; or an attachement to be against him for his contempt: and Egerton declared, that if any nobleman doth commit a contempt, he is to be imprisoned for it^x.

Barons have of late answered uppon oath, in chancery: though in former times they answered uppon their honor; and sometimes uppon oath^y. Egerton over-ruled the earle of Shrewsbury to answer uppon oath: saying, that an answer uppon their honor did not bind their conscience. (I hope the reporter is mistaken; and that no baron, judge, or gentleman is of this opinion, so much derogating from the honor of nobility.) Butt it may be a little more charitably taken; that this lord keeper meant, it did not bind their conscience more, than if they should be permitted to give evidence uppon their honor, to a jury att law: and (saith the L.

^u 11 R. 2. Tit hon. Seld. f. 16. 35 H. 6. 46. Regist. orig. f. 287.

^w 10 H. 4. proces. 198. 21 E. 3. 59. b.—13 E. 3. brief. 259.—14 H. 4. 15.

^x Dyer. f. 208. b. Dodd. Nob. f. 20. 33, 34. Ed. Hastings miles dominus Hastings.

^y M. 10 Jac. Hatchwood, and L. Clinton. M. 10 Jac. duke of Lenox, and L. Clifton, in Canc. Tottle's chancery notes about 18 Eliz. Willoughby, against the earle of Salop.

Keeper) if the jury should find contrary to such evidence, no attaint would lye^a.

Barons of the realme, being defendants in chancery, instead of subpœnas, have a letter directed to them from the lord chancellor, for their appearance att a day; which if they neglect, then the ordinary proces of subpœna is, uppon motion, awarded against them: if they appeare uppon the letter, and after appearance departe without making answear, then they are past the subpœna, and an attachment goes forth against them^b.

The lord Norris tooke exception, that he was served with a subpœna, and not with a letter, to heare judgement^c. The lord chancellor Egerton over-ruled it, saying; that letters were butt of courtesy, and began 16 El. to answer: and some have bin since, to heare judgment. And we find in the proceedings of chancery, where attachements have bin graunted in that court, against the barons of the realm. In that case of the lord Cromwell he was discharged, in the starre-chamber, of the attachment which was awarded, uppon a motion before the master of the rolles, in absence of the keeper of the great seale: butt there were many savings in the order.

In the starre-chamber, the case of the earl of Lincolne was propounded, to all the judges: who being sued by H. Fiennes, for riots, and other misdemeanors in the countrey, refused to answear uppon oath to the commissioners in the countrey, butt would answear uppon his honor; which the commissioners refused to accept,

^a M. 9. Jac. in canc. the lord Norris.

^b Tottle's chancery notes, f. 16. Leicester, against 14 El. Taverner, against lord Cromwell. 32 El. La. Gresham, against lord Dacres. 37 El. against lord Berkley—T. 14 Eliz. Dyer, f. 315.

without the privy of the court. And 11 judges, and many privy counsellors then present, were of opinion; that the earle ought to answear uppon his oath, and not uppon his honor. Yett a booke saith, that a peer shall not be examined by oath^a.

A bishop was attainted, in a writ, before the judges of oyer and terminer; and it was not adjudged, that he should be taken. The bishop brought his writ of error; and assigned that, amongst other things, for error. Butt it was not allowed; bicause he ought not to assigne, for error, that which was done to his owne advantage.

A capias lyes not against a peer, in debt, or trespass; and that for the dignity of his person, and estate. It shall not lye against a prior. A baron brought a writ to the judges, that in personall actions, he shall not be sued by other proces than apperteineth. Butt in cases of this nature, the sherife shall not examin the legality of the capias; butt ought to serve it uppon a peere^b.

In sundry cases they shall not answear, or give testimony uppon oath; butt by protestation, uppon honor^c.

In the court of chivalrie, they speake uppon the loyaltie of their chivalrie. Yett in some cases, the peers have bin examined uppon oath. And in all cases of treason, or felony, or misprision of either of them, a temporall lord of parlement is to be tryed only by his peers: and so in cases made felony by statute. Butt the point of

^a 3 H. 6, 8. Cokaine. 29 E. 3. f. 30. 29 Affis. p. 33. ^e 11 H. 6. (4?) f. 15, 16. 26 H. 8, 7. 27 H. 8. 22. Fitz. nat. br. f. 68. & 247. 36 H. 8. 60. b. Dyer. Co. 6. rep. f. 53. Countesse of Rutland's case.

^f Priviledge of baronage. Seld. p. 131, 132, 135.

having a knight of the jury, in tryalls att law, holds not in the case of spirituall peers^e.

In fundry cases a baron shall have the priviledge of clergy, though he cannot reade. The amerciaments, sett uppon them, shall be ascertained by the justices as their peersⁿ.

An office of stewardship was graunted to the earle of Rutland, without power to make a deputy: yett it was held, that he might exercise the same office by deputy, by reason of the necessity, that is supposed in the law to be, of the earle's attendance uppon the king, and the government of the kingdome. The same reason is for all barons.

We find an ancient precedent, for the priviledge of peers in parlement, in E. 1. time¹. The earle of Cornwall complayned against Bogo de Clare, and the prior of the holy trinity, London; that they in time of parlement, att the procurement of Bogo, did cite the earle in the middest of Westminster hall, to appeare before the archbishop of Canterbury. The priour, and Bogo came, and putt themselves into the grace, mercy, and will of the king, de alto et basso, of high and low; and were committed to the tower of London. Afterwards came the said Bogo, and was fined 2000 markes to the king; and 1000l. for his trespass, to the earle: and the prior was remitted, to doe what the treasurer should say to him, on the king's behalfe.

^e 10 R. 2. in archivis Lon. 18 R. 2. rot. parl. n. 41. 20 R. 3. in fasc. 18 Jun. M. 31 & 32. El.—1 H. 4. f. 1. 13 E. 4. 12. Stanf. l. 3. c. 1—Co. 9. rep. f. 30. Stat. 4. Jac. c. 1. Priviledge of baronage, Seld. p. 159. b.
¹ Ib. p. 159.—Ib. f. 162. Ib. p. 167. ¹ H. 18. E. 1. Petitiones parliament, f. 1. & ib. 10. E. 3.

In H. 6. time^k the judges opinions being demaunded, in the case of Thorpe; the chiefe justice, in the name of all the justices, after some communication and mature deliberation had among them, answered and said: that they ought not to answer to that question; for it hath not bin used aforetime, that the judges should in any wise determine the priviledges of this high court of parlement. For it is so high, and mighty, in it's nature, that it may make law; and that which is law, it may make no law. And the determination, and knowledge of that priviledge, belongs to the lords of the parlement, and not to the judges. And the lords did determine it against Thorpe; and, for the duke of Yorke.

The servants of the peers were held not to be contributory to the expences of the knights of shires; which the commons petitioned to have altered: butt the answer was, it shall be done as aforetime^l.

Thomas Phillips complained of the bishop of London, upon divers actions, in the lower house. Butt it is said, that all the peers with one voice said; that it was not fitt that any peer should answer any one in that place. So it seems to be acknowledged by the house of commons, in the case of the bishop of Bristoll, about his booke of the union, and of the bishops, 1641^m.

In the beginning of queen Elizabeth's reign, an assise being brought against a peere: it was ordeined, that an injunction should goe out of the chancery, sub pœna 500l. that the Pl. should not proceed to tryalⁿ.

^k 31 H. 6. rot. parl. n. 26.

^l 28 E. 3. rot. parl. 11. n. 7. & act 20.

15 R. 2. rot. parl. n. 37. Stat. 12 R. 2. c. 12. Fitz. nat. br. f. 228.

^m 2 Mart. 15 H. 8. Proceres omnes unâ voce dicebant, quod non consentaneum fuit aliquem procerum prædictorum alicui, in eo loco, responsurum. Priviledge of baronage, Seld. p. 9.

ⁿ Broxham, against the lord Willoughby.

R. S. a servant to the earle of Holderneffe, was arrested by R. P. contrary to the priviledge of the lords house : and therefore R. S. was discharged, and R. P. was committed^o.

The like appears in the same booke, in the case of John Phillips, the kings, servant ; and in the case of sir John Osbalston, servant to the earl of Derby : wherein is set down att large the manner of proceedings in those cases. And it is there entred to be generally agreed ; that the servants of those lords who are absent, and had made their proxies, shall enjoy the benefit of their priviledge ; as well as the servants of those lords who are “ then, and there,” present. And that the priviledge of parlement doth beginne with the date of the writ of summons, and not with the delivery thereof : for that the delivery of the writ may be delayed by the negligence of the messengers^p.

In 4 Car. 1. the lords committees^q in parliament called to their assistance Denham, Jones, Whitelock, Croke and Yelverton, justices, to consulte with them concerning a law to be made, by which there should be some remedy against peers of the realme, for causes in chancery ; occasioned by a committment of the lord Deincourt, to the fleet, for breach of a decree of the chancery : and the motion was made in parlement, that he should be discharged ; bicause his body ought not to be arrested. And it was the opinion of all the lords, uppon the order in parlement, 14 Eliz. that his body should not be arrested : and they so ordered it, for all the like cases. Butt the judges, una voce, did informe the lords ; that there was no other meanes to compell a peer to obedience, in chancery, butt by cohercion of his body. For to fine, the chan-

^o Journal of the lords house, 2 Martii anno 1623.
house, 16 Martii 1623.

^p Journall of lords
^q Hil. 4 Car. 1. lib. B. p. 9. Junii 11. 1629.
cellor

cellor hath no power; as was of late begun to be putt in use by chancellor Ellesmere. And they cited the bookes, and shewed divers precedents; that peers were committed by proces of the king's bench in time of parlement. And the judges said; that it would be a great inconvenience, in the course of common justice of the realme, if all the commons should be compelled to obey the chancery; and the lords should be free thereof. Also they said; that the making of such an act of parlement, to compell the peers to obedience, in these cases, by fines, distresses or sequestration of lands, would alter the nature of the chancery; which hath noe power butt in corpora. And a report was made to the councill table, by all the judges, to maintaine this proces against the lords.

These few instances may serve, amongst many more, touching the priviledges of the peeres in England; and the perticular esteem, and honor, which the law affords unto them. I shall now recite a few only of those priviledges which belong to members of the house of commons, in parlement, by reason of the "then and there;" bicause of their attendance uppon the house, and the service of the publique.

Crompton saith, that every knight, burgesse, baron of the cinque ports or others called to parlement, have the priviledge of parlement during the session thereof. So that he who arrests any of them, during this time, shall be imprisoned in the tower, by the nether house wherof he is; and shall be putt to a fine: and the keeper also, if he will not deliver him when the sergeant att arms comes for him, by commandement of the house whereof he is^r.

^r Jurisdiction of courts, f. 7. b. Dyer, f. 60.

A burges of parlement, being in execution, was delivered by priviledge of parlement'.

One Ferrers the king's servant, a burgeſſe of parlement going to the houſe, was arreſted in London: the houſe of commons ſent the ſergeant, for the priſoner; who demaunding him at the comp-ter was reſiſted by the officers, and ill words and blowes given him; and the ſherifs rejected the ſame contemptuouſly. The houſe of commons, informed heerof, would ſitt no longer without their burgeſſe; but roſe, and acquainted the lords therewith who judged the contempt very great, and referred the puniſhment therof to the order of the common houſe. The lord chancellor offered to grant a writ, for the burgeſſe; butt the commons reſuſed it; being of opinion, that all commands, and other acts proceeding from their houſe, were to be done, and executed by their ſergeant, (without writ,) only by the ſhewing of his mace which was his warrant'.

They ſent their ſergeant againe to the ſherifs of London, who underſtanding the diſpleaſure of the houſe, delivered the priſoner: and being ſo required by the ſergeant, they and the officers, and one White who procured the arreſt, did appeare in the common houſe. The ſherifs were committed to the tower; White, to little eaſe; and the officers, to Newgate. And bicauſe Ferrers, being in execution uppon a condemnation of debt, and ſett att large by priviledge of parlement, was not by law to be brought againe to execution; and ſo the party without remedy for his debt, as well againſt him, as his principall debtor: the parlement reſolved to revive the execution againſt W. who was the principall debtor; and to diſcharge Ferrers.

* Dyer. f. 275. Crompton, ſupr. f. 7.

† Ib. f. 7. b. & f. 10. b.

The king, before both houses, declared his approbation of these proceedings of the house of commons; and told them, (as is before noted.) "We are informed by our judges, that we at no time stand so highly in our estate royall, as in the time of parlement; wherein we as head, and you as members, are conjoynd, and knitt together into one body politique. So as whatsoever offence or injury, during that time, is offered to the meanest member of the house, is to be judged as done against our person, and the whole court of parlement." Which prærogative of the court is so great, (as our learned councell informeth us,) as all acts, and processess comming out of any inferiour courts, must for the time cease, and give place unto the highest.

This author cites another case, of the cooke of the temple who, being in execution uppon a statute staple, was discharged by priviledge of parlement; bicause he served the speaker, in that office. And this priviledge of parlement is butt "sedente curia," during the "then and there";

Servants, and attendants uppon their masters, which are necessary, shall have priviledge of parlement; and, for their goods, and chattells. Every man must take notice of all the members of the house, returned of record: but otherwise it is of servants; for in that case there must be notice, else no breach of priviledge*.

A member of parlement shall have priviledge, not only for his servants, butt for his horses, and goods which are distreinable^y.

The sherife of Bucks was chosen knight of the shire, to the parlement; and having a subpœna served on him, att the suit of the

^y Crompton f. 11. Ibid.

* Co. 4 Instit. f. 23.

^y Ibid. f. 24.

lady C. fitting the parlement, by judgment of the house his privilege was allowed him^a.

A burgesse of parlement may have a writ of non procedendo to the justices of assise; that they proceed not in cases depending before them, when a burgesse is party, during the parlement^a.

Several cases are in our bookes of law, touching privilege of parlement, to be delivered out of execution^b.

John River exhibited a bill in debt, against Robert Cofin, an accomptant in the exchequer; who appeared, and after an imparlance brings a supersedeas to the barons of the exchequer, out of the chancery, grounded upon the privilege of parlement; alledging, that he was servant to one of the knights of the shires of Surrey and Suffex, and therefore ought not to be taken, or impleaded. The plaintiff pleaded against the privilege; and prayeth the judgment of the court: which judgement is in these words^c:
 “Heereuppon the said writ being seen, and read by the barons; and having advised with the king’s justices of either bench, in this behalfe. Bicause it seemes to the said barons, by the advice of the justices aforesaid; that there is, and hath bin such a custome; that the great men, and the knights of counties, and cittizens, and burgeses of citties and boroughs, comming to the parlement upon the king’s summons, and their familiars (or meniall servants,) ought not to be taken, or arrested, for any trespass, debt, accompt, covenant or contract whatsoever, whilest they so remaine in the king’s parlement; butt that there is no custome, butt that they may be

^a 1 Car. 1. Ibid. f. 48. ^a Ib. f. 24. ^b 14 E. 4. rot. parl. n. 13. 17 E. 4. n. 11. 36 H. 6. n. 57. 10 H. 6. n. 39. 8 H. 6. n. 57.

^c Hil. 12 E. 4. rot. 4. 7. 10. in scaccario Londin.

impleaded, as in the said writ is supposed: therefore it was considered by the said barons, that the said Cosin should answer the said River, to his said bill; the said writ, or any thing therein, notwithstanding. And afterwards the plaintiff had judgment, against the defendant, upon a nihil dicit.

We find a superseas, in E. 2. time, for the taking of an assise in the time of parlement, for Guido de Beauchampe^d.

Att Hereford assises it was resolved, by justice Jones, that if a sherife sett att large a prisoner, upon mesne processe, upon showing of priviledge of parlement of a servant of a clerke of the convocation; that this is an escape. For the commons ought to sweare in chancery, that such are their servants: and then they shall have a writ of priviledge, under the great seale; and that is good for the sheriffe. And the lords say upon their honor, in chancery, that such a one is their meniall servant; and then he hath a writ of priviledge. And he ought to be a meniall servant; as he was not in this case^e. Butt this is cited only as the single opinion of one judge, obiter, att the assises; not, as a binding, and solemne judgement. And according to this we find it adjudged in the exchequer, and said to have bin the antient course; and always so resolved, when it came before the judges, who are sworne to judge according to law^f.

Generally priviledge of parlement doth hold in informations for the king; unlesse in three cases, treason, felony, and for the peace^g.

^d 7 E. 2. rot. claus. m. 15. dorso.
Reade. Lib. circuit. f. 108. b.

^e 8 Martii. 5 Car. 1. Williams and

^f 12 E. 4. in scaccar. 2. cas.

^g Co. 4. Instit. f. 29.

The parlement cannot give away the priviledge of their members, without their own consents^b.

One had priviledge of parlement in H. 5. time, after execution uppon a judgement: and, in his son's time, for the servants of burgesse^c.

In E. 1. time, the master of the knights templers, demaunded; that they might distreine the chattells of one of the councell, in time of parlement for rent. The king answered, "it seemes not honest, (or fitt,) that those of his councell should be distreined in time of parlement; butt, att another time^d."

And in the case of Thorpe, (before in parte noted,) the commons made request to the king, and lords; that Thorpe the speaker, and W. R. a member of the house, who were in prison, might be sett att liberty according to their priviledge. To which the duke of Yorke showed; that in the vacation he had recovered by verdict, and judgment, in the exchequer: for that Thorpe had carryed away the goods of the duke, for which he remained in execution. And the duke prayeth; he may continue in the said execution^e. The judges, being demanded their opinions, said; it was not their parte to judge of the parlement, which was judge of the law: and that there is no generall, butt a speciall supersedeas of priviledge, which every one hath right unto. The lords resolved, in this case; that Thorpe should remain in execution: and the commons chose a new speaker.

^a Collect. p. 723.

ⁱ 5 H. 5. rot. parl. n. 13.—8 H. 6. rot. parl. n. 59.

^{* Mich. 18 E. 1. petition. parlement. f. 7.—Non videtur honestum, quod illi de concilio suo distringantur, tempore parliamenti; sed, alio tempore.}

¹ 32 H. 6. rot. parl. n. 24, 25, 26, 27.

Coke mentions priviledge of parliament, against subpoenas out of chancery^m.

Touching the later disputes about matters of priviledge of parlement, and the learning delivered theruppon, I hold it not expedient to be remembred; nor, the people's so much concerning themselves therein att that time, who are not allwayes of one mind. Butt [only] his late majesty's assertion, "that no priviledge of parlement can extend to treason, felony, or breach of the peace; with that full profession, worthy to be remembred, that uppon all occasions he would be as carefull of the priviledges of parlement, as of his life or crowne: assuring himselfe, that his care of their priviledges will increase their tendernes of his lawfull prærogative, which are so necessary to the mutuall defence of each other; and both which will be the foundation of a perpetuall perfect intelligence betweene king, and parlement, and of the happines and prosperity of his people."

There is another priviledge of parlement, which is only appertaining to the "then and there," equally due to every member of each house; butt only due whilest the parlement, or their committees, are sitting: and this is freedome of debate, "parlementer," from whence this publique councill hath its name; and is the essentiall priviledge of it. They have also freedome of acting for the publique good, "then and there:" and are not liable to question out of parlement, for their actions, and words, in parlement; except in some great, and high, busineses, wherof in their order and methode.

It hath bin the constant protestation of the speaker of the house of commons, visible in most records of the beginnings of parle-

^m 4 Instit. f. 24.

ments, to have "freedome of debate in the house:" and of later times it hath bin more in the forme of a petition than before; and never hath bin denied. It is esteemed an undoubted right and priviledge, of absolute necessity for every publique councell, to enjoy this priviledge: without which, the matters, in agitation, cannot be throughly discuffed; nor the judgements attaine so cleere a knowledge of the trueth, or to distinguish right and wrong, good and evill; what is best to be received what to be rejected, what to be advised or adjudged, and what lawes will be for the common good to be passed, what to be repealed; and so of all other matters of parlement.

Some affirme, that nothing said, or done in parlement, ought to be questioned elsewhere: and for this, they cite the case of the bishop of Winchester who was questioned, in the king's bench, for departing without leave from the parlement. And he pleaded that he was a peer of the realm; and that if any of them did offend, in parlement, they were to be there questioned for it, and not elsewhere^a. Coke, who hath the record transcribed verbatim, saith; that the sodein opinion of Scrope, in that case, seeming to be against the plea of the bishop, denyes the parlement by his argument, to have power themselves to punish the offence: and he saith; it seemes, that the rest of the judges were against Scrope; for the plea was never over-ruled^b.

And that nothing said, or done in parlement, can be questioned elsewhere; they alledge, amongst others, two speciall reasons. One is, bicause matters in parlement are to be discuffed, adjudged, and determined, "according to the law and custome of parle-

^a P. 3. E. 3. coram rege, rot. 9. dorso. South.

^b 4 Instit. p. 15, 16, 17.

3 E. 3. f. 19.

ment:"

ment^r:" and not by the civill law, nor yett by the common lawes of this realme used in inferior courts. Another reason is given, bicause the king cannot take notice of any thing saide, or done in the houses, butt by report from them: and every member of parlement hath a judicall place, and can be no wittnes; and there can be no other wittnes. And this is said to be the reason, that judges ought not to give any opinion of a matter of parlement; bicause none are "then, and there present," butt only the members who cannot be wittnesses: and bicause it is not to be decided by the common law, butt according to the law and custome of parlements wherof they are not judges; as themselves, in sundry parlements, have acknowledged, and insisted on it^r.

This point was much debated in the case of Hollis, Elliot, and others. Sir William Savile a wittnes, att the councell table, of words spoken by members of the house in parlement, (for which they had bin imprisoned,) was by the house of commons, for his testimony, committed to the tower^r. The same person, (afterwards lord Savile,) comming to London, by his letter to the speaker accused Hollis and Whitelocke, (being commissioners for the parlement in the treaty for peace att Oxford,) to have privately waited uppon the king, and to have advised him in order to the effecting of peace: which some members, (whom I desire to forgive and forgett,) aggravated not only to an high breach of priviledge of parlement, butt to high treason. Butt after long examinations, and debates by the major part of the house, they were saved from the

^r 11 R. 2. rot. parl. n. 7. Secundum legem, et consuetudinem, parliamenti.

^r 3 H. 6. rot. parl. Comte Mariskall's cas. 27 H. 6. rot. parl. n. 18. earle of Arundel's case. 31 H. 6. rot. parl. n. 26, 27, 28. case of Thorpe.

^r 4 & 5 Car. 1. in camerâ stellat. et in banco Rs.—4 Febr. 1640.

ruine designed uppon them, for desiring to further a peace between the king, and his parlement.

After the prosecution against Elliot, and the rest, the next parlement passed these quicke votes.

1. "That the issuing out of warrants, from the privy councill, compelling the members of parlement of 3 Car. during the parlement, to appeare before them, is a breach of the priviledge of parlement by the privy counsellors who issued out the warrant.

2. That the searching, and sealing up their chambers, being members of the house and during the parlement, and issuing warrants for that purpose, is a breach of priviledge.

3. That the exhibiting an information in the starre chamber against them, for matters done by them in parlement, and the same so appearing in the information, is a breach of priviledge.

4. That the councill who subscribed their names to the information, are guilty of the breach of priviledge of parlement'."

Butt to recite perticulars of breaches of priviledge of parlement, (especially in those times,) and where to find the certainty and rules for the same, is no easy taske.

Mr. Whittacre was committed, for execution of the councill's warrant to searche the chambers, and studies, of those gentlemen'. Butt to omitt the latter passages, after which succeeded so much unhappines both to king and people; we may be sufficiently informed by the actions, and opinions of our auncestors, in this point.

* Journall of parlement, commons house, 6 Julij 1641.
the house of commons, 8 Julij 1641.

* Journal of

We find a record in H. 4. time, the title wherof in the margent is : " To hold the commons excused for the matters debated on in parlement". Then the record goes on to this effect. " That such a day the commons showed to the king, how that uppon certaine matters moved among them it might happen, that some of their companions, to please the king, and to advance themselves, doe give an account to the king of such matters before they be determined, and discuffed or agreed amongst the commons : wherby our lord the king may be grievously moved against the commons, or some of them. Wheruppon they prayed the king, very humbly, that he would not admit any such person to relate to him any such matters ; nor, to give any eare to them." Wherunto the king answered. " That his will is, that the commons have deliberation and advice, to conferre and treat upon all their affayres among themselves, to bring them to the better end and conclusion, according to their judgments ; for the good and honor of him, and all his realme : and that he will not heare any such person, nor give credit to him, before that such matters be shewed to the king by the advice, and assent, of all the commons ;" according to the purporte of their said petitions.

These whisperers being thus checkt ; afterwards another breach of their liberties was apprehended, which the king being willing to appease, consented to the act which is intituled, " the indemnity of the lords and commons". Where the record saith : " the king willeth, and graunteth, and declareth, by the advice and assent of the lords ; that it shall be lawfull for the lords to debate together among themselves, in this present parlement, and in every one in time to come, in the absence of the king, of the estate of the realme, and of the

* 2 H. 4. rot. parl. n. 11. De tenir les communes excusez de matiers parlés en parlement.

" 9 H. 4. rot. parl. n. 21. Indemnité des seigneurs et communes.

remedy needfull thereuppon. And that in like manner, it shall be lawfull to the commons on their parte, to debate together of the estate, and remedy aforesaid. Always provided, that the lords of their part, nor the commons of their part, doe not make any report to the king of any graunt by the commons graunted, and by the lords assented; nor of the debates of the said graunt; before that the lords and commons be of one assent, and agreement, in that parte: and then in manner, and forme, as is accustomed; that is to say, by the mouth of the speaker of the said commonalty; to the end, that the lords, and commons, may have the king's assent. And the king further willeth, by assent of the lords aforesaid; that the debate in this present parlement, had as aforesaid, shall not be drawne in example in time to come; nor shall turne to the prejudice, or derogation, of the liberty of the estate for which the commons are at this time come; neither in this present parlement, nor in any other heerafter. Butt willeth, that they, and all the other estates, shall be as free as they have bin heertofore.

Among the printed statutes of H. 8^x. one is intituled; "an act concerning Richard Strode:" which is in the forme of a private act, butt in the enacting part of it is generall, to this effect. "Lamentably complaineth, and sheweth, unto your most discrete wisdomes in this present parlement assembled, Richard Strode, a burgesse of parlement." He setts forth, that "he, with other of the house, putt forth certaine bills in that parlement, against Tinners, for reformation &c. That by reason of this, he was prosecuted att the stannary courts; and an act there made, to the which he was never called to answer; and was condemned in the sum of 160l. and layd in a dungeon under ground, to the great perill of his life, &c. Prayes it may be enacted by the king,

* 4 H. 8. c. 8. Stat. at large.

lords, and commons, that the condemnations of the 1601. and judgements and executions theruppon, be void against Richard Strode. And that all suits, accuséments, condemnations, executions, fines, amerciaments, punishments, corrections, grants, charges and impositions putt or had, or heerafter to be putt or had, unto or uppon the said Richard, and to every other of the person or persons afore specified that now be of this present parlement, or that of any other parlement heerafter shall be for any bill, speaking, reasoning, or declaring of any matter, or matters concerning the parlement, to be communed and treated of; be utterly void, and of none effect. And if the said Richard Strode, or any of all the said other person or persons heerafter to be vexed, troubled, or otherwise charged for any causes as is aforesaid; that then he or they, and every of them so vexed or troubled of and for the same, to have action uppon the case against every such person or persons so vexing, or troubling any, contrary to this ordinance and provision; in the which action, the party grieved shall recover treble damages, and costs."

Many other cases of the like nature may be mett with, touching the indemnity of the members for their words, and actions, in parlement: butt those few already noted may suffice. And it will be equall, not to omit other precedents, where some members of parlement have bin questioned in such cases.

In Phillip and Marie's time^r, informations were preferred in the king's bench against nine and thirty members of the house of commons, for departing without licence, contrary to the king's inhibition. Sixe of these burgessees submitted to a fine; butt whither they paid very little, or any part of it, appears not. And Plowden

^r M. 3. & 4. P. & M. inter placita regis et reginæ.

one of them pleaded, that he continued in parlement: and his plea was without day by the demise of the king. Coke notes uppon it, that if offences done in parlement, might have bin punished elsewhere; it shall be intended, that att some time it would have bin putt in use^z.

In queen Elizabeth's time Arthur Hall, a member of the commons house, for publishing and discovering of the debates and conferences of the house, and writing of a booke to the dishonor of the house, was committed to the tower for 6 moneths, fined in 500 markes, and expelled the house. And it was declared to be against the priviledge of parlement, to disclose the debates of parlement^a.

As there is a due liberty of debates, and actions "then and there," in the parlement; so there are many cautions requisite thereunto, which we find in our records, and some of them severe enough. As Haxey's case, in R. 2. time^b; when the commons in parlement, among other matters, required the avoiding of the outrageous expences of the king's house, and namely of bishops, and ladyes. The king, touching this article, seemed to be much offended: saying, that he would be free therin; and that the commons therby committed offence against him, his dignity, and liberty: Which he willed the lords to declare to the commons; and willed the duke of Lancaster to charge the speaker, to declare the name of him who exhibited the same bill. After this declaration made by the lords, to the commons, they delivered the name of the exhibiter^c, which was sir Thomas Haxey: the which bill was delivered by the clerke of the parlement, to the clerke of the

^z 4 Instit. f. 17 & 1 Instit. sect. 100.
mons, f. 14. Co. 4. Instit. f. 23. 9 H. 4. rot. parl. n. 20, 21.
2. rot. parl. n. 14, 15.

^a 23 Eliz. Journal of the commons, f. 14. Co. 4. Instit. f. 23. 9 H. 4. rot. parl. n. 20, 21.

^c n. 16.

crōwne: After which the commons came forthwith before the king, shewing themselves heavy of cheere; and declaring that they meant no harne, they submitted themselves to the king; and most humbly craved pardon. The chancellor theruppon, by the king's command, declared, that the king held them excused^d.

After that, sir Thomas Haxey, by parlement, was adjudged to dye as a traytor^e. The archbishops, and other bishops craved of the king, that he might have life; which the king graunted. That done they, for the honesty of the church (for he was a clerke,) required that he might remaine in their keeping; which the king also graunted. And it is obfervable, the time when this was done; and no authority concurring with it in any other time. And in the first yeare of H. 4^f. uppon the petition of sir Thomas Haxey clerke, the king pardoneth, and revoketh the judgement made against him, 20 R. 2; restoreth him to the bloud, and to the recovery of all his goods, livings, lands and tenements.

The next year the commons require the king, that he would not give ear to any flearing, and untrue reports of the commons house; untill the end might trye the same: wherunto the king graunted^e.

In the same yeare, the last day of this parlement, the commons, kneeling before the king, beseech him to pardon them, if happily they should through ignorance offend: the king graunted^b.

In the 8th yeare of this king, the commons pray him to hold them excused, for that report was made, that they had talked of

^d n. 17.^e n. 22.^f 1 H. 4. rot. parl. n. 91.^g 2 H. 4.

rot. parl. n. 11.

^b 2 H. 4. rot. parl. n. 46.

the king's person, otherwise than them beseemed; which was untrue: and so the king by answear tooke the same¹.

In the 9 yeare of this king was the indemnity of the lords and commons made, which is before noted to be in the printed statute of that yeare^k.

In his 11 year, after the speaker had made his protestation, the king graunted the same; adjoyning therunto by his own mouth: "that fith as well the lords, as the commons, were come to unity; he doubted not, that they the said commons would speake any unfitting words, or attempt any thing to the contrary^l."

In his 13 year the lords and commons, by their petition, seeme to lament, for that the report went, that the king was offended with some of the house, for matters done in this, and the last parlement; wherby they require the king to imbrace them, as his loyall subjects: to which the king, of his meere grace, granteth^m.

Many passages of the like nature may be found: butt I doubt I may be censured to have bin too large already. I shall end this discourse with the perticular honor, and respect, which is given by the speakers to every member; and, by the members to the respective speakers, and to one another; and to the houses.

When any member comes into either house, "then and there" fitting, he salutes the speaker, and in him the house; is uncovered and makes his congees: and the speaker salutes the member againe, putting of his hatt to him. And when any one speakes, he stands up, and is uncovered during the time of his speaking.

¹ 8 H. 4. rot. parl. n. 16.
rot. parl. n. 10.

^k 9 H. 4. rot. parl. n. 22.

^l 11 H. 4.

^m 13 H. 4. rot. parl. n. 26.

Butt I shall now briefly mention the honour, and respect, and priviledge given to members of the publique councells of the Jewes; from whence we, and other nations, have our patterne in most matters of this nature. And heerin much of my labour is saved in the former notes concerning elders; and the great dignity, honor and esteeme which was given to them, who were the members of the publique councells of the Hebrewes. It was one of the laws given them; thou shalt not revile the gods, (that is the magistrates,) nor curse the rulers of the people^a: the highest wherof were members of their councells. In their sanhedrim a great reverence, and honor, was given not only to the person of the prince, and of the father of the sanhedrim: butt likewise there was a particular honor, and respect, afforded to the person of every member of that councell; wherof it is said. “When a wise man, (that is one of the members of the councell,) comes into the assembly, one member fate, and another stood up; every one in his turne rising up, as he passed by, untill he was sett in his own place^b.”

The king himselfe intertained the members of the councell with great honor, and respect, when they came to him, and in his presence: Wherof it is said by a learned rabbi, thus translated. “The king was commanded to honor the doctors of the law: and when any members of the sanhedrim, or wise men of Israel, came into his presence; he rose up to them, and placed them by his side.” And he instanceth in Afa, king of Judah, who to those that came to him, though butt disciples, would rise up from his throne, kissing them; and stiling them, “my master, my lord, &c^c.”

^a Exod. xxii. 8.

^b Gemara Babilon, ad tit. Haraijoth. Sapiens cum ingrediebatur, alter sedebat et alter stabat; quisque vice suâ in transitu assurgebat, usque dum suo confederat loco.

^c Rambanus. Schiccardus jus reg. Hebræorum. cap. subditi. p. 91. Præceptum erat regi honorare doctores legis: cum igitur intrabant coram ipso synedriales, aut sapientes Israel, assurgebat ipsis, collocans eos juxta latus suum—Mi magister! Mi domine!

That these members of the jewish councells were doctors, or teachers of the law, appears in that description of them which sayes: "plainly they were universall presbiters, or elders, indowed as well with the office of teaching, as of judging all causes^a." Hence was that of the Apostle. "Lett the elders that rule well be counted worthy of double honor, especially they who labour in the word, and doctrine." And in the first verse, the Apostle injoynes them. "Rebuke not an elder; butt intreat him as a father^b." Which is a testimony of the honor, and priviledge, afforded to them. Concurring heerwith is that text when the high priest, in the councell, commaunded them which stood by to smite Paul; he saith. God shall smite thee, thou whited wall! For fittest thou to judge me, after the law; and commaundest me to be smitten, contrary to the law^c. And they that stood by said: "Revilest thou God's high priest?" Then, notwithstanding the provocation and injustice done to him, Paul saith; I wist not brethren, that he was the high priest: For it is written; thou shalt not speake evill of the ruler of thy people^d. According to that in Exodus, before noted. Wisely the Dutch expositors say: this double honor meanes maintenance of the ministers: which is very just and necessary both for them and for governors, (which doubtles are intended by elders in this text,) who were teachers of the word and doctrine also^e.

I come now, (and shall be very brieft therin,) to the honor, and priviledge, of senators in divers nations. Gothofred observes among the Græcians, and Romans; that "those who did surpasse the rest

^a De synedr. Seld. l. 2. f. 281. planè erant presbiteri universales, seu seniores, munere tam docendi quam judicandi universum donati.

^b 1 Tim. v. 1.

^c Acts xxiii. 4, 5, &c.

^d 1 Tim. v. 17.

—v. 5.

^e The Dutch notes on the Bible on this text. 1 Tim. v. 17.

in honor, and dignity, were called elders; were members of their senates; and were as the roman senators, who received highest honor from the people." In the first foundation of the roman senate, he saith: that Romulus "chose an hundred men out of the chiefeſt of the cittizens;" and honored them with the name of fathers^w, the highest title amongst them. Their successors were also called patricij, and patres conscripti, and senatores; titles testifying the highest honor, and esteeme, which those times afforded to any persons whatsoever. And they injoyed many priviledges, some not different from what hath bin before noted of the members of our parlements. As that which, Ærodiā observes, was allowed to the senators, and not to other cittizens. He saith; that "eminent and great persons doe plead att liberty, not in fetters;" that is, they were not lyable to arrests, and imprisonment in law suits, as others were: and there he speakes of exemption "for honor sake^x;" like unto the exemption of our barons, and parlement men from suits, and arrests, for the honor given unto them.

Much of this nature might be said of the princes of Germany, and of the peers of France and Spaine, and of the earles, barons, and gentlemen, members of the rickſdagh of the Swedes, and Gothes: and generally, of the members of all publique councells every where who are, (or ought to be,) the wise men, the great men, the valiant men, the learned men, the rich men and the pious men of the nation; or else they are not worthy of that high trust and imployment of publique counsellors. And where soever these qualifications are found they draw respect, and honor, and

^w Gothofredus, p. 698. Qui cæteros honore et dignitate vincebant—Romæ senatores qui summum [honorem] à populo accipiebant. Ibid. f. 22. Electos è civium primoribus centum viros.

^x Ærod. decret. f. 380, 381. Illustres personæ causam dicunt satis dato non—Ibid. f. 274, 275. propter honorem.

esteeme inseparably to them. And these great men, and senators, particularly those in Sweden, have a full exemption of their persons and estates from arrests or distresses, by legall proces, and suits; especially during the "then and there," in the time and at the place of the sitting of their publique counsell. Which privilege of not being disturbed, molested, or diverted from their attendance upon the publique service by suits of law, arrests of their persons, or seisure of their goods and the like, seemeth naturally and in reason to be due to the persons, and estates, of those who labour in the service of the publique, in their counsell and affayres: if not in respect of themselves, yett for the publiques sake which may suffer, and be indamaged through want of the presence, and service of their senators if they should be so disturbed, or diverted from their service and attendance; and wherein whilest they doe labour, they are to be accounted worthy of double honor.

C H A P. LXXXVII

By the common councill.

THE names of "common councill," great councill, generall councill, publique councill, king's councill, are frequent appellations of our parlement. Cæsar relates, that in Brittain, the highest matters of administration, both of civill government and of warre, "by common councill were committed unto Cassibelane^a." In the letter of pope Constantine, to Brithwald archbishop of Canterbury, he mentions the " councill of all England." In king Edgar's time, it is called " the councill of the kingdome^b." And king Ethelbert hath the very word of our writ, the common councill^c. Which word is also used by king Ina, Ethelulfe, Edmond, Edgar, and others; as the historians of those times expresse it. And our parlement is likewise often stiled, " the councill," in divers of our printed statutes; more particularly in the statutes of E. 1. E. 2. & E. 3. Butt not so often, after these times, except with the addition of phrase, of the " common" councill, the " great councill of the realme," the " generall councill of the kingdome," and the like; which I shall spare instances to confirme^d.

^a Cæsar comment. l. 1. f. 87. Communi concilio permiffa est Cassivelauno.

^b Spelman. concil. p. 209. Concilium totius Angliæ. Ibid. p. 431.

^c Chron. Brompton. col. 733. Commune concilium. ^d 4 E. 1. stat. bigamy. 7 E. 1. stat. mortmain. 13 E. 1. stat. Acton Burnel, & West. 2. 13 E. 1. c. 1. stat. Marchmont. 20 E. 1. stat. vouchers, & stat. Wast. & stat. de defens. juris. 33 E. 1. Ordinance of inquests. ordinat. pro statu Hibern. temp. E. 1. & 9 E. 2. Art. cleri. & 1 E. 3. c. 1.

The Hebrewes had the like appellations; as their word, which signifies an "house of judgement," is usually interpreted in the constitutions "synagogues, and places of councill." And their word "sanhedrim" is often rendred in the Latin, concilium: and by the same name the christian fathers used to call their synods. So in the Acts of the apostles it is said, that "they called the councill together, and all the senate of the children of Israel:" the vulgar latin reades it, "they called a councill." The æthiopick version is; they assembled the councill of them, which is called by Bertram "the generall councill." And the greeke word, *γερεσία*, is for the most part translated a "senate and a councill;" and so is also the word *ἐκκλησία*. Butt the word "senate" is the antient, and generally used word, for the "publique counsell" of the Græcians, Romans and other nations; especially, by the elder writers of the latine stories; and the word hath kept this acceptation to this day. Though in Sweden, Denmarke and some other countries, it is also taken for that councill which is rather a privy councill, or councill of state, whose members they call senators; than, for a generall publique councill for which that word was proper with the Romans; and *senatus consultum*, the "act or ordinance of the senate" made uppon councill had together, as also the Greeke for those acts doth signify^b. As in the names of "common councill, and generall councill," there seemes a resemblance to those among the Græcians of Panionium, Panætolum and Amphictyonium &c. and the like of Pananglium is by Cambden noted^c.

The latin word "concio," in which a publique councill is sometimes translated, signifies the people called together in councill;

^a סֵדְרָה Synagogas, et conciliabula, *Συνέδριον*. ^b Acts v. 21. *Συνέδριον*
καὶ πᾶσαν τὴν γερεσίαν τῶν υἱῶν Ἰσραὴλ. Convocaverunt concilium.

^c P. 101. Universale concilium.

^d διαβεβλεύμενον.

^e Raleigh hist. of the world. l. 4. f. 162. Lupanus. l. 2. f. 454. Brittan. courts.

and in that sence it is used by Livy, where he saith: "the people being called together to councill, he spake to them &c^k." The word "cœtus" is also used for a councill; as in that place, (which is good divinity,) in Cicero. "O excellent day, when I shall make my progresse to that divine councill of soules:" where all pious souls doe long to be^l.

The French translate the word *γερουσία*, "the councill assembled:" and the Spanish yett further saith; "the councill of all the estates^m."

The Swedes and Gothes doe give the name of " councill " to their ricksdaugh, and herdagh. The Italian, French, Spanyards, and all nations according to their severall idioms, have their peculiar and proper names for their respective counsell; yett all seem to signify the same thing, though in a different language; and doe relate to councill. Nor can it well be supposed otherwise; when in all countries, those conventions are all to one end; to consulte about the publique good, and safety: and the names given to such meetings are from some attribute, or circumstance relating to that end. And bicause their chiefe worke is to advise, and consulte about the publique good, and safety; thence it is that they have the name of " counsellis."

Our " publique counsellis " we find also often stiled by the name of the " great councill ". As in the saxon times it is called " the great synod, the great councill, the great meeting, or the great

^k Lib. 1. Vocato ad concilium populo, in concionem ascendit.

^l De senectute. O præclarum diem, quum ad illud divinum animorum, concilium cætumque proficiscar!

^m De conseil assemblée. El conseio de todos ordines.

assembly:" and the word "synod," used by our Saxon auncestors, signifies a great assembly". The latin authors of the succeeding ages, among other names, called our publique councill the "great court, the great place, the great justice seate." And in our antient terms of law it hath the name of the "great councill, and the great courte." In our records mention is made of Henry de Beaumont, "a baron of the great and privy councill of the king°;" butt that great councill probably was the councill of the peers, which usually had that stile. In the parlement rolles at that time, and after, it is frequently called the great councill. The statute of templers faith, that "the great men being called together," &c. that is the parliament^p. One of our antiquaries calles it a tribunal "mixt, and which is the greatest and most large;" and called by the Latines "the great assembly^q."

Our histories of the saxon times, of the Danes, and Normans, and our records antienter and later, and our ordinary expressions and language to this day, doe give it the name of "great councill."

Nor was that name a stranger to the Hebrewes for their publique councills, as their word which signifies the great sanhedrim, and the other which signifies, the great house of judgment. It is also, by the writers of the hebrew government, often stiled "the great sanhedrim, the great senate, the greater senate," and the like^r.

ⁿ Miclan Synod, Micel synode, Micel gemote. Lamb. Saxon lawes. f. 53.

^o Jani Anglor. Seld. f. 124. Co. 9. Epist. Co. 8. rep. Prince's cas. Curiam magnam, magnam placeam, magnum placitum.—Reg. Orig. f. 280. et Bracton, l. 1. c. 2. Magnum concilium, magna curia—16 E. 2. rot. claus. m. 5. Baro de magno et secreto concilio regis.

^p 8 E. 2. rot. parl. m. 3. 3 E. 4. ps. 1. m. 2. &c.

Magnum concilium.—17 E. 2. stat. templar.

^q Co. Epist. 9. mixtum

quod maximum, et longe amplissimum. Magnum conventum.

^r סנהדרין הגדולה בית דין הגדול. Schiccardus jus reg. Hebræor. c. Elect.

theor. 2. Bertramus. Menochius. Seld. de Syn. l. 2. p. 109. Sanhedrim magnum, senatus magnus, senatus major, &c.

In France, they had the great conventions of the barons and princes about the person of the king; and in the place of parlement, (saith their author,) was taken, and usurped, the name of great councill. The same appellation is used of the parlement of France, where it is said: "the cause interdicted to the great councill, he again resumed to himselfe".

We find our parlement usually also stiled by the name of "the great assembly, and the assembly of parlement," and in our printed statutes, and acts, declarations, and ordinary proceedings, the expression is obvious of "the lords and commons assembled in parlement:" as the French called "the assembly of estates".

The Hebrews, where there were severall colleagues sitting together, called that a sanhedrim which is a confessus, a "sitting together, a meeting, an assembly;" so called from the greeke words from whence the word sanhedrim is fetched; and is usuall with the Græcians in that sense. The like is also in the talmud; and familiarly, among the schollars, it is called "the booke of the ordinary judges assembled together".

The word diette, in the low dutch, signifies the people; and from thence the assembly of the people hath that name, of diette, in Germany, and Sweden. The Germans also use the word richteramtung for an assembly of their publique councill.

With us the name of "estates" is likewise of common use, and often met with in our records, printed statutes and histories, for

^a Pasquier Recherches. f. 77. — Grand conseil. Thuanus. l. 34. f. 203. Causam rursus concilio magno interdictam ad se revocavit.

^b L'Assemblée des Estats.

^c Jo. Drusius. ad difficil. loca, num. 48. Buxtorfius Lexicon. Talmud. col. 1509.

1513. Seld. de syn. l. 2. p. 106. Συνέδρα. Συνεδρία. Συνέδρος. Συνέδριον. Scævola. l.

ult. tit. decret. als. ord. faciend. Liber judicum ordinariorum.

those who are assembled in parlement. In our ordinary expressions att this day we say, "the three estates in parlement." And in the beginning of most of our parlement rolles, it is said: that the chancellor, in the presence of "the estates," declared the causes of summoning the parlement, and the like appellation is in sundry other places of our records.

In the jewish sanhedrim, besides the prince of the senate, and the father, or nasi, all the other members were esteemed and called, "presbiters and elders, and wise men"; titles of the highest rank, and estate among them, and besides these, in their more generall assemblies or councilles, they had some of all other severall rankes, and estates, among them; as princes, heads of tribes, chiefe of the fathers, rulers of thousands, rulers of hundreds, of fifties, and of tennes; king, lords, and commons; all estates, as hath bin before in the chapter of the three estates noted.

An eminent author, Hugh Grotius, doth instruct us; that there be divers kinds of citizens, and bodyes of them, which are severally "ordeined" by different qualities for the commonwealth; "from whence these qualities and these bodyes are called in Latine, ordines, and vulgarly the estates*." This word, "ordines," Cambden commonly useth for our parlement: as the "estates of England, and the estates of Scotland". And Thuanus doth the like, for publique councilles; as the "ordines or estates of Pannonia, the estates of Spaine" &c. of other nations, and generally by him, and by Grotius, Bodine and the rest of the latine authors, the like use

* Presbyteri, sapientes.

* De antiquitat. reipub. Battavicæ. f. 23.

Unde et hæ qualitates, et ipsa corpora, latine ordines vocantur: vulgus etiam status appellant.

† Hist. f. 70. b. Regni Angliæ ordines, Regni Scotiæ ordines, &c. Lib. 114. f. 48. & 605. — Pannoniæ ordines. Hispaniæ ordines, &c.

is made of the word ordines or estates; they use also the words comitia, conventus &c. for the "publique counsell" of Prague, Hungary, Polonia, Spayne, &c. Grotius describes them to be, "the assemblies of those who represent the people, distributed into ranke and orders:" and these he calls the "publique counsell of the estates".

The French called those generall counsell, which they antiently had, "the estates, and the assembly of estates;" consisting of all rankes, and sorts of men either in person, or by their deputies.

The low Dutch call their provinciall counsell, the "states provinciall:" and their generall counsell, for all the united provinces, the "states generall," bicause it consists, of the lords, who have suffrage there, and of the deputies of all the citties; composed of all rankes, and estates.

Severall other appellations of "publique counsell" have bin in parte noted, in other places; and more might be here recited: butt these may suffice, and among them none is more generall or more antient than that of "common councill." And this name testifies the antiquity of publique counsell, which in all nations began with the first institution of government amongst them. Of the originall of those in England, occasion will be given to speake in the next chapter of the originall of them all, the antiquity of common counsell among the Hebrewes, somewhat will be here inserted. It is a trueth not controverted, that their government, in the times of the patriarkes, was by the father of the family: and

* Pragæ Comitia, Poloniæ, Hungariæ, Hispaniæ, &c. Thuanus l. 114. f. 605. & l. 138. f. 1308. Resp. Hisp. f. 122. De jure belli, f. 10. Calepine, comitia. Conventus eorum qui populum in classes distributum referunt. Les Estats—L'Assemblée des Estats.

such governors were Abraham, Isaac, and Jacob. And when by reason of the famine, Jacob and his family went down to Ægypt, to his son Joseph, some greeke interpreters, and others affirme; that the number of souls which came thither with him, was seaventy and five: butt the holy scriptures doe cleerly relate the number to be seaventy foules^a. And Bertram noteth, that of those 70 souls came 70 families; and of every one of those families, there was one person who excelled the rest: and so of the 70 families were 70 persons, who made “the assembly of the elders,” or common councill. Whereuppon is inferred; that the institution, or congregation by the precept of God to Moses, of 70 men, is to be taken “for a restoring of the colledge of judgement, or councill, before established, however then so renewed.” And heerwith agreeth Grotius before noted; that these 70 elders in Ægypt “were principall in councill^b.”

That they had this common councill of 70 men so antiently as in Ægypt, appears by the text where God commaunds Moses, as soone as he was appointed head of his people: “goe, and gather the elders of Israel together.” And when the sanhedrim was instituted: “gather unto me 70 men, of the elders of Israel^c.” Though Moses was inspired with wisdom, and ability from God; yett he found the want of councill; and complaines to God, that he is not able to beare the burden of the people alone. Whereuppon the Lord was pleased to institute “a common councill” for his assistance: and this in the beginning of his government, in the second year after they were come out of the land of Ægypt, when they

^a Gen. xlv. 27. Exod. ii. 5. Deut. x. 12.

^b De repub. Judaic. c. 5.—

Seniorum coetum.—Pro instauratione collegii judicarii antea stabilitati, utcunque sic nunc renovati. Annot. ad Num. xi. 16. & ad Act. vii. 13. Præerant consilio,

^c Exod. iii. 16.—Numb. xi. 16.

were in their journey in the wildernes; before they were growne up into any settlement, or arrived to any certaine habitation.

Indeed Pererius makes a doubt of the institution of this councill in the wildernes; and having cited some authors for it, he saith; they should show out of the holy scripture, or approved histories, that the Hebrewes had ever such a councill, or senate, and that it continued to the time of Herode^a: That the silence of Josephus, the most diligent and accurate writer of the jewish affayres, is very strange, touching the same senate; and also of Philo, and others. Butt to this it is answered by several authors, and particularly by Menochius; that Pererius doth unworthily doubt of this matter, which is every where admitted by authors, many whereof he there cites. Josephus mentions a cause agitated in the sanhedrim: and the text in Numb. xi. (which it is strange so learned a man should forgett,) is an unquestionable prooffe of the institution of this senate att that time. And several other texts, and places, in the old and new testament before noted, doe mention this "common councill," and are undeniable proofes of it^e.

The easterne nations had likewise very antiently their publique councill: such a one we find to have bin assembled by Nimrod, and this as soone as the people of the earth were growne up into a kind of commonwealth, under the first king mentioned in the holy story. The words of the text are, "goe to, lett us build us a citty" &c^f. which expositors agree to be in consultation, as is elsewhere noted. Bertram saith, that the government in the time of Nimrod was either private or publique; the private was in the father of the family, as it was before that time; and the publique

^a De benediēt. patriarchar. in marg. 83, 84. ^e Lib. de rep. Hebræorum, col. 39.—Lib. 14. antiquit. c. 17. ἐν τῷ συνέδρίῳ.—2 Chron. xxvi. 15. xvii. 29. Judith, vii. 9.

^f Gen. xi. 4.

was twofold; “monarchicall or kingly government, and democraticall: and both had their elders or senators^s”. Those under monarchy are sometimes called “the king’s servants;” as in severall texts of scripture doth occurre: butt in the democraticall government, they are alwayes called “elders^h,” and it was common to both governments, to have cognifance of publique matters, and of contracts between severall families, and of offences and crimes committed out of the families; matters proper for a common councill, to be advifed and determined by them. Yett fo as the smaller matters, and of leffer moment, were difpatched by the king and his counfellors or senators. “Butt the greater matters were fo constituted and ordered, by the king and senators, that they were wholly referred unto the people:” as is evident by fundry texts of scripture, agreed by expositors to meane counfellorsⁱ.

The Affyrians, Perfians, Græcians, and generally thofe eafterne nations, uppon the firft institution of their governments, had their common counsellors eftablifhed. And we read of the princes of Moab, of Balak, of Midia, of the Philiftines and the like: fo of the elders of Moab, of Midian, &c. which were the senators of thofe nations^k.

The government of Athens was by a king, and fenate, from the beginning; reformed by Solon; and of fo great veneration, that it is faid, the citty of Athens muft of neceffity, att the firft be constituted, and governed, by the higheft wifdome and prudence. And

^s De repub. Judaic. p. 38, 39.—Monarchica feu Regia et Democratica, utraque feniores fuos, feu fenatores habuit.

^h Gen. xx. 8. & xl. 2. 20. & iv. 10. 37, 38. & xlv. 16. & l. 7.—Jofh. ix. 11. &c.

ⁱ Bertramus, p. 40, 41.

Graviores autem ita per regem, et fenatores, constituerentur; ut omnino ad populum referrentur. Gen. c. xxiii. & c. xxxiv. & c. xxix. 22. Jofh. ix. 11. Gen. xii. 15. &c.

^k Num. xxii. 23. & 47. Jofh. xiii. Gen. l. 7. &c.

of Lycurgus it is related, that he used to consult with the princes of the citty, before he published any law unto the people. Which proves the common counsell of that time¹.

The great patterne of the westerne parts, of the world, was given by the Romans. The first founder of their citty, Romulus, did att the same time also institute the senate^m, and seeing the city flourish by the strong hand of choice young men, who were wholly to be governed by councill, and prudence: having chosen an hundred of the chiefeft citizens, he honored them with the name of fathers, and called them the senate; and bicause most of them were senes, old men, therefore they were called senators.

Pasquier affirme, that antiently in Gaule, before the conquest of Julius Cæsar, they had diettes or common counsellⁿ; and Cæsar himselfe mentions them by the name of common counsell; as he doth, that of Brittain^o. They relate also, that the Druydes did yearly assemblée, and sitt, in a certaine hollowed place; doing right universally to the Gaules, who obliged themselves to their decrees as to arrests^p. That they had persons elected; that in regard of the affayres of greatest importance, and which were of generall concernement to Gaule, each commonwealth did resolve it selfe into diettes, or common counsell. And these were as antient as the testimony of history doth beare; and were assistant to their first princes and governors^q.

¹ Polybius. Gothofredus, p. 698.—Ibid. p. 706.

^m Gothofred. l. 1. f. 20.

Igitur senatus primum ab Romulo institutus est.

ⁿ Recherches. f. 81.

^o Comment. l. 5. f. 84.

^p En certain lieu sacré les quels se ferment à

leurs sentences, comme aux arrests.

^q Pasquier, Recherches, f. 7.—

Du Haillan. Sefellius de repub. Gall. &c.

In their first forme of yearly parlements, wherin (saith Haillan) our kings were the presidents', they are mentioned; and in the time of king Pepin, and Charlemaigne; and that the majors of the pallace did first introduce them, after they were furnished with the power of kings'.

That tribunall, or councill in Portugall, which is by them called the most high councill, is by some apprehended to have bin the supream common councill of that kingdome, in the time of their first princes. The like is conjectured of the councill called the supream councill of Spayne', which is of greatest antiquity; and the more probable to have bin common counsell, in regard of those of the Arragonians, which in their constitution and powers testify, that they were cleerly common counsell. So doe likewise those assemblyes of Corduba, and of the kingdome of Granada, before the expulsion of the Moores". And those counsell in Sicily, and other places in that part of the world, doe beare the testimony of antiquity from the first foundation of their respective governments.

The northerne nations come not short heerin. The German diettes are of great antiquity, held by their first princes, whose acts were of no moment without the authority and subscriptions of the barons, and nobles: which in times past was to the earles, and princes; as, to the antient kings of Germany, the supream and common councill". That they had such before the Romans invaded them appears by Tacitus, who relates; that "to all the princes were earles, or governors of hundreds out of the people, pre-

^r Du Haillan, f. 178. 179. Au quel præsidioient nos roys. ^s f. 42.

^t Respub. Hispan. f. 122. Altissimum concilium. Guevara, l. 1. f. 5. 6. Alvarez Valasco, decis. Lusitan. consult. 100. Concilium summum Hispaniæ.

^u Thuanus, l. 46. f. 97. Gothofred, p. 240. ^w Grotius, de antiquitat. reipub. Battaviæ, f. 40.

sent both for councill, and authority^{*}." And that before noted: "of the lesser matters the princes doe consulte; of the greater, all consulte." And Grotius notes, that "these princes, both by dignity of birth, and office, were the same which afterwards were barons and nobles; and who with them did give distribution of possessions, and were over hundreds of the people^y."

That it was after the same manner in the Netherlands, their learned countryman Grotius testifies; where he notes the "harmony" between prince, and people, and the estates in councill; and that "therby the princes, nobles, and commons have long flourished^z."

Strabo saith; that "all the Celtæ were addicted to the aristocraticall government;" and he explaines who the Celtæ were; that "when the Græcians doe speake of the Celtæ, they comprehend under that name, both the French and Germans^a." And if these nations were then so affected to this government, and to counsell; it must needs be under their most antient princes.

The like antient counsell were among the Danes; and in Poland, under their first princes; and in their neighbour nations, of the northerne partes^b.

^{*} Tacitus de moribus Germanor. The original seems to say, "That each chief, or judge, (who were all chosen in the greater councils,) had a hundred of the people companions, or assistants, to him, (comites;) who were both a council, and authority to him." Eliguntur in iisdem conciliis principes qui jura per pagos, vicosque, reddunt. "Centeni singulis, ex plebe comites, consilium simul & auctoritas, adfunt." (M)

^y Cæsar Comment. f. 12. 13. ^z De antiquit. reip. Battavicæ, f. 42. Hoc consentu principes, et nobiles, et plebs, diu florere.

^a Lib. 4. Celtas omnes optimatum imperiis esse addictos. Celtas autem Græci cum dicunt; tum Gallos, tum Germanos complectuntur. ^b Ingulphus, f. 894. — Thuanus, l. 56. f. 1134.

Of the "Herdagh, and Ricksdagh," of the Swedes and Gothes, their supream common counsell, their countreyman writes; that "they are the publique assemblies of the estates, which many ages past, and long time since, had their beginning." Which was explained, and confirmed, by the verball authority of their old great chancellor Oxenstierne, who affirmed: that "the beginning of their supream common counsell was under their first kings; and was as antient as any of their records, histories, or traditions did reach unto; although with some variations in the formes, occasioned by changes, and accidents, passing through so many ages."

Nor was it otherwise in any nation; butt from their first growing up into a body of a people requiring government, that required councill wherof they found a necessity, for the safety, and well being, of men in societies, and commonwealths: whom nature, and reason, doe instruct uppon all matters of importance to desire, and seeke for councill of others, for the good and conservation of themselves; and for their mutuall and common defence, for their private and publique good, peace, and safety. And from this instinct it is, and uppon this ground, that some have deduced this name of "common councill;" and, the originall of these counsell, from that universall, and supream, lawe of selfe preservation:

When Cæsar invaded this island, the people tooke councill together how to resist him, and to preserve themselves; and for this end was the councill of the princes required by Cassibelan; and uppon the like occasions, by all his successors; and universally hath bin so, by all princes, and people^d.

Those under Nimrod, the first growne body of a people in common society, had "a common councill" among themselves, for

^c Ruffæus, secretar. Suecicus. Conventus sunt ordinum publici; qui multis abhinc retro seculis, et olim, sunt inchoati.

^d Galfrid. Monumeth.

their owne preservation, when they said, (as is elsewhere noted.) "Goe to, lett us make bricke; and goe to, lett us build us a citty, and tower, whose toppe may reach unto heaven; and lett us make us a name." And they give the reason of this councill, "least we be scattered abroad uppon the face of the whole earth^e."

An interpreter saith they were in consultation to build a large citty; and, a tower therin, of exceeding height; partly to make themselves famous, and partly, that they might unite their power and society, and prevent the daunger of being disperfed one from another^f. Here was selfe preservation the cause, and originall, of this common councill.

Another saith, that "with one consent they all tooke councill and labour." And some hold, that the ends of this councill, were to have a safe retreit, when they were disperfed; or to provide for themselves a refuge against another general deluge^g. However, it was, for selfe preservation.

When the children of Ammon warred against the children of Israel; their elders, or common councill, advised for selfe preservation; and sought out Jephthah to be their leader against their enemies^h. So did they when Benhadad king of Affyria, and 32 kings with him, and all his host came against Samaria. In this distresse, and for selfe preservation, Ahab called all the elders of the land, "the common councill:" and they gave him prosperous adviceⁱ. Butt examples need not be multiplyed on this argument, either of the Hebrewes; or, of the Græcians, Romans, Brittaines, Gaules, Gothes, or any other nations; whose stories afforde plenty of them.

^e Gen. xi. 3, 4.

^f Bp. Halle's paraphrase on this text.

^g Paræi comment. in hunc textum. Uno consensu consilium, et laborem, omnes suscipiunt. Berosus, lib. 4. Josephus.

^h Judges, xi. 5, 6.

ⁱ Ki. xx. 7.

And,

And, that they were no sooner growne up into a body of people, butt they used common councills for the safety, and preservation, of themselves: and that, uppon the grounds of reason, and nature, implanted in the foules of men by our Creator; and from a necessity to consulte together in common, in order to common safety, and selfe preservation. And this is warranted by the wise man, who instructeth us: "that where no councill is, the people fall; butt in the multitude of counsellors there is safety^k."

Among all the lawes præscribed by almighty God, or intimated by nature and reason to mankind, none is more prevalent, or better observed, than that supream law of *salus populi*, the safety and conservation of the people; for which end, all lawes, and institutions are, or ought to be: and none are more tending therunto, than the institution of "common councills" and the use of them.

Cassiodore affirms, that "every wise man who foresees," and takes course for preservation from mischiefe and daunger; he "seeketh counsell^l," and for the necessity of it for selfe preservation, we are taught by Barnesius; that councill is a great act of government: and who so taketh it away, from a commonwealth, doth as it were take away the reason, from the soule^m. Agreeable heerunto is that passage of Bodin, who saith; that in every commonwealth a senate, or "common councill," is as necessary; as the soule, and reason, is in the body: without the which, it is unable, not only to governe it selfe; butt, incapable to subsist one momentⁿ. And although this author was no great friend to common councills; yett he shoves heere the necessity of them, for selfe

^k Prov. xi. 14.

^l L. 6. Ep. 29. Omnis providens consilium quærit.

^m Lib. 1. de similt. Reipub.

ⁿ De repub. l. 3. p. 371, 372. Senatus

in omni republicâ tam necessarius, quam in corpore ipso mens, ac ratio; sine qua corpus ipsum non modo sese regere; sed ne momento quidem subsistere possit.

preservation. And in another place he saith; that a prince ought to make use of the best counsell; not only in the more weighty, butt in the lesser affayres of the commonwealth: though nothing can seeme to be smalle that belongs to it. Wherof he gives the reason; bicause (saith he) nothing is of so great weight, and moment, in the administration of affayres in all sortes of commonwealthes, as a senate with authority, and councill; which doubtles is most tending to common safety, and preservation. Therefore, (saith the viscount of St. Albans,) the antient times doe sett forth, in figure, both the incorporation, and inseperable conjunction of councill with kings; in that they say, Jupiter did marry Metis, which signifyeth councill: wherby they intend, that soveraignty is married to councill; which surely is the best way to preserve both soveraigne, and subjects^o. Affayres which are not tossed uppon the arguments, of councill, will be tossed uppon the waves of fortune; wherby the ship of the commonwealth will be in great daunger to be wracked. Butt if she be steered by "common councill;" where that best pilote guides, where councill hath the helme; she seldome founders: butt, by the blessing of God, proceedes prosperously; avoydes the rockes, and sands, and waves of difficulty; and brings safety, and preservation both to prince, and people. And may that be the issue of "the common counsell" of this kingdome, both present, and to come!

^o Essay of counsell.

C H A P. LXXXVIII

Of our said kingdome.

THE common councill of this kingdome" appears, by this name of it, and by the histories of our countrey, to have bin of great antiquity. Some derive the originall thereof from the time of the Saxons, who were a people inhabiting part of Germany. The story of their being called in hither, and planting heere, is sufficiently knowne; and from them some doe hold was the originall of our parlements, or publique councill.

Selden seemes to be of this opinion, where speaking of the councill of the Germans, and the resemblance of our parlements therunto, he saith of them: "An institution not undeservedly appearing to have proceeded from the antient Germans". So Lambard brings the beginning of our parlements, from the time in which the Germans, or English, did first sett foot in this island, to invade it^b: and the old saxon names, before noted, given to those councill of that language, are some confirmation of this opinion; so are severall authorities in our bookes^c. Another argument for this opinion is brought from the resemblances of our parlements, to the german diettes, in the constitution of them; with king, lords, and com-

^a Jani Anglorum, f. 125. Institutum, haut immerito, ab antiquis Germanis manasse visum.

^b Jurisdiction of courts, f. 243.

^c Co. 4. Inst. &

Ep. 9. rep. On Lit. f. 109, 110. Selden. Spelman, &c.

mons, which hath bin before noted ; and to the powers, and privileges, of that councell. Their annual meetings, the indiction, and buisnes ; negatives, and proceedings in both, so lively relating to one another ; are sett downe att large, by their authors^d. Another argument, for this opinion, is from the resemblance of divers of our lawes, to those of Germany ; whereby may be gathered, that our lawes were derived from them : and if our ordinary lawes ; then, more probably, the supream court of law, and constitution, of our publique councell.

To their officers, courts of ordinary justice, and legall proceedings, ours have much similitude. Their custome of gavel-kind, (from giff all kin,) giving or dividing the estate among all the children, was heere with us in England ; and continues yett in some places, in the same manner as it is att this day deduced from greatest antiquity in Germany.

In the manuscripts of the saxon lawes, may be found great affinity between them ; and, the lawes and customes of the empire. Their dignities of duke, earle, marquesse, and baron, are the same in effect, and privilege ; though differing, in the language of their names, from those with us.

Their feuds, and tenures, have great likenes to ours ; especially those which were in use with us, in the time of our saxon aunces-tors. By these few, and many other perticulars which I learned amongst them, a great resemblance appears betweene divers of their lawes and customes, and ours ; which is brought for an argument, that our lawes, and government, and constitution of our publique councells, had their originall from the Saxons.

^d Arumæus. Limnæus. Lib. de ratione status imper. Ger. Milenii, &c.

Others,

Others, from the same grounds of resemblance, are of opinion, that the originall of our lawes, government, and publique councells, is from the Gothes and Swedes; att least as they were part of those, generally called by the name of Saxons, who invaded this island, and settled heere.

I shall not make the perticular parallel, as I recite a few of them: butt, leave the same to the intelligent English reader; who whilst he reades the customs of the Gothes, and Swedes, will reade those of his own countrey.

They have had time out of minde, and the same continues to this day, their judicatories in corporations, and in the countrey; within, smaller, and in greater territories. In the greater, the lands Heued, or sherife, assisted with a man knowing in the law, is the judge.

They have also their standing courts of justice att Stockholme, and some in other places: the highest of which, and from whence there was no appeale butt to the publique councell, was called kenungsnambd; that is, king's bench, or the courte where the king himselfe fate to judge; or sworne judges named by him; and it had cognizance of criminall matters*. They have also their distinct courts for matters of the chancery, of the king's revenew, of suits between party and party, of matters of the admiraltie: and all proceed according to the customes, and lawes of their countrey. They had trialls by ordeil, and by duell; though now taken away: and their antient, and present triall, is by the verdict of twelve men sworne, whom they call gude man, and sank man; that is, good men and true†.

* Loccen. antiquit. Sueo-Goth. p. 59.
Goth. p. 61. 66.

† Loccennii antiquitat. Sueo-

Their language is extreemly agreeing with the English; as uppon other occasions I have noted. Of their monies, the bigger piece was called a skilling; and they often mention sterling money^a. There was amity, and commerce between them, and the Britains, long before the time of duke William of Normandy. The English money is sometimes digged out of their ground; and not long since, a piece of silver about the value of a shilling, with the inscription, of "Ethelred the son of Edgar, king of England;" whom stories relate to have sent into Gothland, and Sweden, preachers of the gospel of Christ^b.

Their marryages are thus made. When the parents, or tutors and relations have consented; and the parties to be marryed are agreed; the minister in the church doth publish this consent uppon three Lord's dayes, before the marryage; which is solemnized with giving the ringe. The next morning after the wedding, the bride-groome gives a some of money to the bride, to be put into such hands as she pleaseth, for the use of her and her children; which is called, a morgen gaven, which very word is found, among our old law termes, to signify a second dowrey. The next morning twelve of the kindred of the marryed couple, laying their hands uppon a speare, doe testify in publique the contract of marryage: and this they call wapuntac, as hath bin elsewhere noted.

Their titles of honor are duke, earle, baron, and those of the lesser nobilitie; and the persons of all of them are priviledged from arrests. And some of their officers, and judges, are called loverds; the same word, antiently used by us, for those, whom we now call lords.

^a Loccennii antiquitat. Sueo-Goth. p. 101.
Danic. p. 149.

^b Pontanus, l. 5. hist.

Their publique councells are summoned by letters, or writs from the king, issuing out of the chancery: and are constituted of lords spirituall, in right of their function; of lords temporall and the rest of the nobility, sitting there by right of primogeniture; of proctors of the clergy, chosen by the ministers of each dioceffe; and of deputies of provinces, cittizens of citties, and burgessees of boroughs, elected by the respective people. From these, and fundry other resemblances, is concluded by some a probability of the originall of our customes, and constitution of our parlements, from the Goths and Swedes. And something of them, and of our formes, are not unlikely to have come from them; especially if they were part of those invaders, whom we call Saxons.

Others have deduced the originall of our lawes, and parlements, from the Romans. Butt therof, and of the improbability of it, somewhat hath bin noted in another place, and is the lesse likely; if, as some would have it, the original of our parlements is to be derived from our brittish auncestors.

For proof wherof they alleadge the testimony of Horne, who speaking of parlements, and usages in England, saith; that he hath collected them, from the time of king Arthur¹. And of this king a graunt is mentioned, to the university of Cambridge, "by the councell and assent of all the bishops, and princes of the kingdome:" which is a cleer prooffe of a publique councell, then helde².

The author further saith, that "he hath a writing of the manner of holding parlements, when there was neither bishop, nor

¹ Mirroir of justices, c. 1. § 3. f. 5.

² Jani Anglor. Seld. f. 125.

Consilio, et assensu, omnium et singulorum pontificum, et principum, istius regni. Jo. Caius. l. 1. antiq. Cant.

earle, nor baron; and yett then the kings held their publique counsell:” which must needs be the time of the Brittaines. Bertha, the christian queen of Kent, procured judgements to be established, “by the councill of the wise men.” And Salterne affirmeth, that “100 years before this, in the time of Arthur the warriour, we reade of parlements¹:” and that the words of Alfred, in his lawes, are; that some assemblies were held in England, and other countries, of bishops, and other eminent wise men; which this author, by the circumstances, takes to be spoken of the time of king Lucius. And (saith he) “we reade of parlements, wapentakes, &c. in the time of Aurelius Ambrosius, and Arthur the worthy.” And he remembers that passage of Lambard, and Coke, before noted; of “senators in Brittain in the time of the Romans^m, which were by the Saxons called aldermen.” And of the Brittaines he saith; that “the nobles, together with the priests and other selected commons of this island, made the common councill, wherof Cæsar speakes.” And if so, it is no small testimony of the originall of our parlements from the Brittaines.

The publique counsell advised with by king Arthur, Uter Pendragon, Aurelius Ambrosius, Vortigerne, Octavius, Constantine, Arviragus, Belinus, Cassivelaune, Lucius and other Brittainish princes, have bin elsewhere noted; and are all of them arguments of the antiquity of our publique counsellⁿ. And of the lawes of Moltutius Dunwallo, who is conjectured to reigne about the time of Nehemiah, some of them are supposed to be inserted in that collection of lawes by Edward the Confessor; as namely, the priviledge of temples, highwayes, and ploughs, from distresses and arrests:

¹ Lib. de antiquis Britannia legibus, f. 13. & 35.

^m F. 58.

ⁿ Galfrid. Monumeth. l. 9. c. 10. usque 20. & c. 1. Math. West. an. 525. 537. Walsingham, &c.

and some of which lawes, being also part of Magna Charta, remaine in force to this day amongst us. And the publique counsell of the majores natu, and the multitude, with whom Brute himselfe advised, if these relations be authentique, (and which are also elsewhere noted) they afford some testimony for the originall of our lawes, and parlements, to be from the Brittaines.

We come now to the most perfect, and best of patternes, the institution and præscript of the all wise God to his chosen people, the posterity of Abraham; from whence some are willing to derive the originall of our lawes, and common counsell. And surely to be a copy, of this originall, must needs be most beautiful. The honor of the opinion deserves a consideration; and a few of many testimonies for it are these.

One they fetch from the resemblance of some customes, and usages among us, to those of the Hebrews, in military affayres. That of our esquires, or armigeri, they resemble to David's coming to Saul; and he "stood before him, and he became his armour bearer:" the Latine is armiger; and the esquires of our king's body are resembled heerunto. Under those passages where Saul spake unto his armour bearer, armigero suo; and the ten young men that bare Jacob's armor; our other esquires are resembled^o: and our knights, or equites, they resemble to the horsemen of Israel, often mentioned in the holy story^p: and the honor to ride, particularly noted in some great men and officers. They had their captain of the host, whom we also call captain general. They

^o 1 Sam. xvi. 21. 1 Sam. xxxi. 4. 2 Sam. xviii. 15. ^p Jud. x. 4.
& xii. 14. & v. 10. Eccles. x. 4. 2 Chr. ix. 25. 2 Ki. xiii. 7. 1 Ki. x. 26.
Ezek. xxiii. 6.—Jud. iv. 2. 7. 1 Sam. xiv. 50. 2 Sam. xvii. 25. & xxiv. 2.
—1 Ki. xi. 24. 2 Ki. i. 11. Nu. xxxi. 14. 1 Sam. xxii. 7.—Jer. xxxix. 13.

had their captains of bands, and captains of fifties, of hundreds, of 1000; as we have our companies and regiments. They had their captains of the guard, and captains of charets; which Diodorus Siculus saith, was the custome of the antient Brittaines, to fight in charets.

Our lords, or peers, they resemble to the princes, dukes, heads, chiefs, &c. of the Hebrewes: and they are rendred optimates and magnates, of the children of Israel. The same word, magnates, is used for the peers in this writ^a.

Their great men, or rulers of 1000, of 100, of 50, and of tens, were not chosen, or appointed by Moses; without the counsell, or consent, of the people. He, reciting that buisnes afterwards to the people, saith, that he bid them: "take ye wise men and understanding, and knowne among your tribes, and I will make them rulers over you'." The hebrewe word sounds, "give unto yourselves wise men" &c: and the greeke agrees therewith. The vulgar latine saith, "give from among yourselves." The chaldee is, "call together, or provide for yourselves," and the syriacke expressly, "choose unto yourselves." The spanish Jewes say, "give unto yourselves judges." Saadias, the same'. An Arabick MS. is "elect for yourselves, or out of yourselves, judges." The christian versions have; "take you, bring you, and the like." Lyranus uppon the word, "take ye," saith; "it was by election, and consent of the people:" and Josephus saith, "they were approved by the people, for men excelling in virtue and justice'." Uppon the whole matter it is evident; that these rulers of the people were of

^a Psal. cviii. 1. Dan. i. 3. Jonah. iii. 8. Mar. vi. 11. 21. Bertramus. Seld. l. 2. de syn. p. 149.

ⁱ L. 2. Seld. de syn. p. 631.—Deut. i. 13.

ⁱ גְּבִי לָכֵן זָמְנוּ לָכֵן—Dada vos Varones. prenez vous. Neemptu.

ⁱ Orig. Judaic. l. 3. c. 3.

their owne election. So with us the heretoches, in each countey, were chofen by the common councell in full folcmote". So were the fherifs, untill 9 E. 2. and fo are the knights, cittizens, and burgefles for the parlement, att this day.

Our fherifs are refembled to their rulers of thoufands; our high conftables of hundreds, to their rulers of hundreds; our petty conftables, to their rulers of fiftyes; and our tithing men, to their rulers of tennes: that is, of fo many families".

They had their princes of provinces; we have prefidents of the north, of Wales, of Ulfter, of Munfter, &c^x.

They had their chancellor, whom our tranflation renders "recorder;" the fpanifh faves "chanciller," and that in Ezra feemes to explaine it, where Rehum is named the chancellor. They had a great officer a treafuror, and others under him; they had other great officers, whence fome derive our patterne for the fame; in which I need not be too perticular^y.

Another ground of this opinion is from the refemblance of many of our cuftomes, ufages, and lawes, to thofe of the Hebrewes.

They had their collectors for the poore, and other inferiour minifters in their townes, and cities; and had judicatories in citties, and in territories, and in provinces. Which was according to the doctrine of the Talmud: "that befides Jerufalem, they placed leffer fanhedrims, or inferiour courts of juftice, in citties, and countries; that the people might not be compelled to come up to Jerufalem for juftice^z;" and this was confonant to that præcept: "judges and

^x Leges Edouardi Rs. c. de Heretochiis.

^y Menochius.

^z 1 Ki. xx. 14.

^r 2 Sam. viii. 16.—Ezra iv. 8. Ifa. xxii. 15. Neh. xiii. 13.

^z Moſes

Kotzenſis, præcept. affirmat. 97. Maimon. tit. fanh. c. 1. § 3. De ſyn. Seld. l. 2.

p. 241. R. Menachim Recanati. f. 22. 2.

officers shalt thou make thee, in all thy gates, throughout thy tribes^a." We have our judicatories in mannors, in corporations, in hundreds, and in counties.

They had also, besides these inferiour courts, the highest justice brought home to them in the countrey, by the judges going of circuits, as it is said of Samuel. And he went from year to year in circuit of Bethel, and Gilgal, and Mizpeh; and judged Israel in all those places. And his return was to Ramah, for there was his house, and there he judged Israel^b. Our judges ride yearly, and judge England in the severall shire townes of England; and after their circuite, they returne to Westminster, and there they judge the people.

It is an exact description of purchases, and conveyances, which Moses makes in the buying of the cave of Macpelah. After the agreement, which was generously and nobly made on both parts; presently, "Abraham weighed to Ephron the silver," &c. It seemes they were exact in their dealings in those times; they weighed their money, which custome was generally practised afterwards; whence came the pounds of money, and the use of payment of money by weight was frequent with us, in former times; and the mettall wherof their money was then made, was silver.

The text goes on; "which he had named in the audience of the sons of Heth," &c. It was then counted materiall, to have wittnes for the payment of the money: and the prooffe of payment of the consideration money, uppon a purchase, is requisite by the law of England. "Fower hundred shekels of silver, currant money with the marchant," was the consideration of the purchase; a valuable

^a Deut. xvi. 18.

^b 1 Sam. vii. 16, 17.

^c Gen. xxiii. 16.

^d V. 16.

consideration, amounting to, of our money, about one hundred crownes^e, and it was "currant money," from whence we have our standard of money: and it was currant "with the marchants," the great masters of commerce, and best knowing matters of this nature; as they doe with us, att this day.

In the next verse followes, "and the field of Ephron, &c^t." Heere is a certainty of the thing solde, described in this contract, "the field of Ephron;" who was the vendor, and is heere on the first parte named in the assurance; the seller Ephron, and the thing sold the field. The words of the text goe on, "the which was in Mackpelah, which was before Mamre," &c. Heere is sett downe, the place where the field lay, "in Mackpelah before Mamre;" exactly followed in the law of England, where in all our assurances, the place where the purchased land lyes is necessary to be expressed; in such a towne, and in such a countey. The text goes on, "the field, and the cave which was therin," &c. heere the parcells are sett downe more perticularly. Though the field comprehended the cave; yett the cave being the thing chiefly desired, and lying within the field, the field is also by name expressed in the assurance. And this also is exactly followed, in the assurances, by the law of England: a pitt, or cave, a toft, or barne within a field [is] expressed, as well as the field itselfe. This text saith further, "and all the trees that were in the field, that were in all the borders round about, were made sure unto Abraham^s." Though the name of the field might carry the trees also, which grew within the field; yett they are heere named in the assurance, as we use to say in our conveyances: all trees, woods, underwoods, &c. standing, growing, or being uppon the premises, in all the borders round about. Heere are buttalls, and boundaries, "all the borders round about:" wherin

* Godwyn antiquit. Rom.

† Gen. xxiii. 17.

‡ V. 18.

the law of England is also curious, in conveyances. And thus were these premisses made sure unto Abraham, "for a burying place," to have; which to one's family is a custome with many gentlemen, and noblemen, to this day.

Another text, touching conveyances of lands, I shall likewise mention; where Jeremiah relates. "I bought the field of Hanameel, my uncle's son, that was in Anathoth; and weighed him the money, even seaventeen shekells of silver: and I subscribed the evidence, and sealed it; and tooke witnesses, and weighed him the money in the balances. So I tooke the evidences of the purchase, both that which was sealed, according to the lawe and custome, and that which was open^b." Here is the vendor, Hanameel; the vendee, Jeremiah; the thing sold, a field; the place where it lay, in Anathoth; the purchase, or consideration, money 17 shekells; the signing, and sealing of the evidences, two parts of it, all before witnesses: and hardly can a more exact, and full, description be made of a conveyance drawne, and executed, according to the law of England.

It was the observation, and no impertinent one, of that reverend and learned judge, (whose memory I have most cause to honor;) that from these texts, and usages, was taken the law and custome, in use amongst us att this day, of conveyances and deeds of purchase, and the execution of them; of livery, and seisin, signing, sealing, and witnessing of deeds, with counterparts of them.

Another instance is given in the case of the daughters of Zelophahad, who, in a publique councill, and supream court of justice, before Moses and Eleazar the priest; and before the princes, and all the congregation; presented their case, and demaunded judge-

^b Jer. xxxii. 9, 10, 11.

ment: "give us a possession," &c. Moses brings their cause before the Lord; who is pleased to judge it himselfe, saying, "the daughters of Zelophahad say right; thou shalt cause the inheritance of their fathers to passe unto them;" (so it doth with us.) And the Lord is pleased, there to declare further concerning discents, "if a man dye, and have no son; then you shall cause the inheritance to passe unto his daughters. And if he have no daughter; then ye shall give his inheritance unto his brethren. And if he have no brethren; then ye shall give his inheritance to his father's brethren. And if his father have no brethren; then ye shall give his inheritance unto his kinsman, that is next to him, of his familyⁱ." To this whole lawe of discents, our's hath a full resemblance. Uppon this is grounded the opinion of their doctors; that the order or series of hereditary succession is this. "If one dye, leaving no sonne; ye shall transferre his inheritance to his daughter. Butt the son is to be preferred before the daughter, and all the issue of the son: the daughter, and all her issue, is to be preferred before the brother's^k." And it is a generall rule: that where any one, in succession, is to be preferred; there all the issue of that party is to be preferred likewise. Which is cleerly our law. We find a custome among the Jewes, where some wicked idolaters, sinfull persons were to be slaine as publique ennemies; and all lovers of piety were, without delay, to fall uppon them, and kill them: esteeming it a duety of piety, to slay such wicked persons^l.

Antiently in England, when a man was outlawed, it was said of him, he beares a wolfe's head. Wherof our old law booke, Bracton saith; that an outlawed person forfeiteth &c. and "from the time of his being outlawed, he bears a wolfe's head;" so that any one

ⁱ Num. xxvii. 2.—v. 4.—v. 5.—v. 8, &c.

^k Misna. tit. Baba Bathra, c. 8.

De successionibus ad leges Ebraeorum. Seld. p. 3.

^l Philo. lib. περί θυνόντων.

might kill him. And such in E. 3. time are called forbannis; and by the lawes of Edward the confessor, it is said of such a one: that if he be found, and can be kept, he shall be brought alive unto the king: or his head, if he defend himselfe: "for he beares a wolfe's head^m." And that phrase [is] continued in H. 4. time; as appears in an old manuscript of Chaucer, in the rare library of Selden; where the poet, speaking of Gamelin, in the cooke of London's tale, saith thus.

Gamelin come boldlich, into the mote hall;
And put adowne his hoode, among the lordis alle.
"God save your lordinges, that now heere be!
Butt Brokbak, sheriffe, euel mot thou the!
Whi hadst thou done me that shame, and vilanie;
For to late endite me, and wolfe's hede me crye?"

Butt I must not insist so largely, upon other perticulars which I meet with in the holy story, relating to this argument: butt I shall briefly mention some of them, to which I find in our lawes, and customes, a great resemblance; and take them in order of the story.

Pharaoh gives a safe conduct to Abraham: "he commaunded his men concerning him; and they sent him away, and his wife, and all that he hadⁿ."

Their solemnization of funeralls, and burying places; Abraham's conveyance of all his estate, to Isaac in his life time; the use to give jewels, and other gifts in wooing; the making of

^m Utlagatus, extra legem positus. Caput lupinum gerit. L. 3. de coron. c. 13.
§ 3. Quô utlegatus est, caput gerit lupinum.—1 E. 3. f. 19. a.—Leg. Edouardi
Conf. c. 7.—Lupinum enim gerit caput, quod Anglice pulker heorod dicitur.

ⁿ Gen. xii. 20.

feasts att marryages ; imprisonment in *salvâ, et arctâ custodiâ* ; salutations by asking for friend, and of their prosperity ; felony to be death ; solemnizing buryals, with fundry others ; are precedents recorded in the booke of Genesis, and followed by us°. So are, these insuing. Entertainment of straingers, by eating with them. Adjournment of causes, for difficultie, to the principall judges. Manslaughter, death. Chance medley, not capitall. Sanctuary denyed in case of willfull murder. Parricide, death. The stealing of a man, death ; with us to steal a woman, in some cases, is made felony by act of parlement. Damages in battery, for loss of time, and for the charge of the cure. The lord, maiheming his villein, gives manumission. Punishment, where one's beast doth hurt ; the owner knowing that quality to be in his beast, and not helping it. Difference between burglary, and other felony ; and that it is not burglary, if the sun be risen att the fact done. Satisfaction, by him who is the occasion, of hurt by fire. Wager of law, in case of detinue of goods. Witchcraft, and sodomy, punished with death. Habits of ministers. Mourning apparell. Propinquity of kindred, and alliance, impediments of marriage. Buggery forbid. Gleaning, in harvest, to be for the poore. To use certain weights, and measures. Buggery, sodomitry, witchcraft ; death. On the sabbath day, all labour whatsoever forbidden. On festivall dayes, servile labour only. Imprisonment of offenders. Goods dedicated to God, not to be transferred to humane uses. Composition for tithes. Imprisonment of offenders. Treason, to revolt from the just authority over them. Tenths payed by the clergy. The heir of a person attainted had no inheritance : for the daughters of Zelophahad did averre, that their father was none of the traiterous

° Gen. xxiii. 2. 4. 6. Gen. xxiv. 36. & xxv. 57. Gen. xxix. 22. Gen. xxxix. 20. Gen. xliii. 27. Gen. xliv. 9. Gen. l. 7.

conspiracy of Korah^p. The vow of a wife bound not her husband: but a single woman was bound by her vow. The citties of refuge; from thence, institution of our sanctuaries. Difference betweene chance medley, and murder; butt no difference of murder, and manslaughter: for, in all cases of willfull homicide, it was death^q. In our law, the judgement of manslaughter is death: butt the clergy have usurped uppon the temporall law, to demande clergy in that case. As in case of manslaughter, with us, the party may be challenged by the ordinary, to have his clergy: so in case of chance medley, with them, the party had his refuge. With them there was an avenger of bloud, the next kinsman: with us, the next heire may have an appeale; and bloud must have bloud. In cases of difficulty, they had an adjournement to superiour judges^r. Civill justice, as to declaring the law, belonged most supremely to both spirituall, and temporall judges; as with us, in parlement. The king was to follow the rule of law. Murder, not pardonable. Not remove land markes. Inquisition, uppon the view of a dead body: as our coroner's inquest. Blame lay'd on the next townes; as, with us, punishment, by hanging. For all mort chattells, there was no property gott by losing, or finding: with us, a trover in that case. Rape was capitall. A millstone not pawnable: with us, not distreinable. Felony with them, to steale a man: and with us, in some cases, by statute law. Gleanings, to be left. Weights, and measures, must be certaine. The law was publicquely [read], att certain times, in the hearing of all the peo-

^p Exod. xviii. 12.—v. 26. Exod. xxi. 12, 13. v. 14. v. 15. v. 16.—v. 18. 19. v. 26.—v. 29. 36.—Exod. xxii. 2, 3.—v. 6. v. 10, 11. v. 17. c. xxviii. v. 35. c. xxxiii. v. 4, 5. Levit. xviii. 6. v. 22, 23. c. xix. v. 9, 10. v. 35, 36. c. xx. v. 16, 17. 27. c. xxiii. v. 7, 8. c. xxiv. v. 12. c. xxvii. v. 28. v. 30, 31. Num. xv. 34. c. xviii. v. 26. c. xxvii. v. 3. ^q c. xxx. v. 7. v. 10. c. xxxv. v. 6. v. 16. ad 25. ^r v. 24. c. xxxvi. v. 33. Deut. xvii. 8. v. 9. v. 12.

ple : to instruct them in it'. With us, many statutes are appointed to be read, att the assizes and sessions ; and all are to be proclaimed : and charges are publicquely given, or read, att the assizes and sessions, before all the people. Achan, and all his progeny and goods, destroyed for his offence. So all goods, and estate is forfeited by our attainders. Partition made of the land, in writing, by commissioners. The priest, sett before the temporall governor. Government of women, both in peace, and warre ; as our queens. The liberty to ride did belong to men, in authority ; as with us, to ride uppon foot clothes. A bastard, not inheritable. Parents consent asked in marriage. Feasting att weddings. Lands, passed before the people, and elders, to make it notorious ; like our livery uppon feffements, without deed. It was used for a courtesy, and honor, to sett one in the chiefeft place, among the guests ; as precedency is, with us. It appeareth, that women had dowries, assigned them by their husbands, uppon marriage. Buryalls of the better sort used to be in their owne chapells, and buryall places. Sheep-shearing ; time of feasting. One putt to death for saying, " he killed Saul, by his command ; " wheras it was not so. Warrants. Sentence, uppon confession. Dancing, approved. Largeffes, bestowed att solemne actions. Restitution, to the son of one attainted. A kind of patterne of the institution of our copyholdes. David's ten concubins, shutt up ; a patterne of our nunnes. Precedence, of great officers. Taxes, a grievous yoake. Petitions of grievances, to the king. Assembly of king, and people ; when these petitions were exhibited : like as, in our parlement. Fees, and rewards, to prophets. Guard of the king. The debt of the auncestor, lyable on the body of the heir. The son might be made a bondman, for the father's debt. Prophets, brought up under the antient pro-

* Deut. xvii. v. 18, 19. c. xix. v. 13. v. 14. c. xxi. v. 1, 2. v. 22. c. xxii. v. 3. v. 23. c. xxiv. v. 6. v. 7. v. 14. c. xxv. v. 13. c. xxxi. v. 10, 11.

phets; like our colledges. And though the children of the prophets were brought up in studies; yett they betooke themselves to their bodily labour, for better maintenance: to which the beginning of the institution of our monkes is not unlike. The king, in his owne person, called on to doe justice¹: our kings used to sitt in person, in the king's bench, and in the starre chamber. A writ of restitution, awarded for possession, and meane profits. A patterne of nunneries. Coronation oath. Church musicke. Mattens, and evensonge. Father, may make younger son chiefe. The support of the king was, partly, of aydes, and benevolences. Proclamations, for declaring of the king's will. Respect had, to please the congregation: to have "the commons assent." Posts sent abroad by the king, and lords. Summons of councell, by the king's letters, or writs. First fruits, and tithes, payd. Nunnery. The Persians had treasuries for their records, and decrees. Tolle, tribute, and custome, layd on the people. Utlary, for not appearance; as forfeiture of goods, and seperation from the congregation. Mortgage of lands. Governor's servants, ruling over the people. Joyfullnes, on holydayes; and, bountifullness to the poore. Duetyes of praying, and reading the scripture, on fast dayes. Sabbaoth, observation. Punishment of treason, by hanging. Favourites, craft. Private man's actions, recorded. Mutuall intertainments, of friends. Inquiry of former ages; precedents. A curse to have one's remembrance perish; to have no son, or nephew. Seats of justice; publique reverence, by rising up. Theft, by necessity, pittied. False weights, reproved. Suertiship, to be avoyded; very prejudiciall.

¹ Joshua vii. 24. c. xviii. v. 4. c. xxi. v. 1.—Jud. iv. 18, 19. 21. c. x. v. 4.—c. xi. v. 1, 2. c. xiv. v. 1, 2. v. 10. Ruthe iv. 4. 1 Sam. ix. 22.—c. xviii. v. 25.—c. xxv. v. 1.—v. 4. ad 8. 2 Sam. i. 1.—c. vi. v. 14.—v. 19. c. ix. v. 7. c. xx. v. 3. v. 23, 24.—1 Kings, xii. 4. 13. v. 4. v. 1. 3, 4. c. xiv. v. 3. v. 27. 2 Kings, iv. 1.—v. 38. c. vi. v. 12.—v. 26.

Ingrossing of corne, a crime. Talebearers, hated. False wittnes, punished. A good name, prized. Borrower, serves the lender. Husbandry, honored. Depopulation, a crime. Justice, valued. Bride's attire. Precedents, to be sought. Duety of the magistrate. Inrollement of deeds of purchase. Buryall, with solemnity; and heraldrie. Mortgages, and pawnes. The king might alien his inheritance, to his sons, in perpetuity; butt to his servants, for a time only. He could not impeach the inheritance of his subjects. To be clothed with purple, and to have a chayne about his necke, were ensignes of dignity. Raisers of taxes, distastfull. Courtiers clothed with strange apparel. Stealers, to be cutt of. The custome of celebrating birth dayes. Suit for precedency, offensive. The common employments of men were husbandry, and merchandize. Antient solemnity of meeting of bridegroomes. Distribution, of the time. The spirituality, not to be judges in lay causes. No deliverance out of execution, till the last mite be payd. Wearing of a ring, an ornament. Musique, and dauncing, att meetings of mirth. Hearing to precede judgement. The same ought not to be judge, and accuser. Howers of prayer. Letters, missive; commissions, to imprison. The king's chamberlein to be made a friend. The manner of their church service; first reading of scripture, and then preaching. Decrees, or canons, of the apostles, and elders. Taking recognisances, of offenders. Judges, not to judge causes which belong not to them. Wrongs, between parties, to be determined by suit, before the judge: wrongs, to the publique, by a "common councill." Not lawfull to speake evill of rulers. Proceeding, by accusation, by orators. An innocent man ought not to be left in prison. In capitall causes, the accusers were to come, face to face. Adjournement of causes, for difficulty. The cause of imprisonment, to be certefyed; "corpus cum causa." An appeal shutts up the hands of the first judge, from delivering the prisoner; though there
be

be cause for it. Prisoners did beare chaynes. Where no law, no transgression. The husband dying; the wife is loosed from the law of the husband. A wife that marryeth, her husband living, is an adulteresse. In honor, preferre one another. Hospitality, prayed: revenge, forbid. Peaceablenes injoynd; and obedience to powers. Excommunication, in the church. Judges, to be men best esteemed. Pay of foldiers. Man, the head of the woman. Short haire, for men; and long haire, for women. Women, to be silent in the church. Two, or more, wittnesse. The heir is as a servant. Labour injoynd. Dutyes of husbands, and wives; parents, and children; masters, and servants. Every one worke. Women, not to teach; nor to usurpe authority over the man. Novices, not to be made governors. Master of a family, to provide for it. Elders, that rule well, worthy of double honor. The labourer, to have his hire. Servants, to honor masters; to be obedient; not to answear againe. An oath, end of strife. Where a testament is; there must be, of necessity, the death of the testator. Governor's duety. Hospitality, injoynd. Rayling accusations, not to be admitted^u.

Many

^u 2 Kings, c. viii. v. 6. c. xxii. v. 14. 1 Chron. xi. 3. c. xxiii. 5. v. 30. c. xxvi. v. 10. 2 Chron. xvii. 5. c. xxx. 5. v. 4. v. 12. c. xxxi. v. 5. c. xxxiv. v. 22. Ezra, v. 17. c. vii. v. 24. c. x. v. 8. Neh. v. 3. v. 15. c. viii. v. 10, 11. c. ix. v. 1, 2, 3. c. x. v. 31. Esther, ii. 22, 23. c. iii. v. 8, 9. —c. vi. v. 3. Job, i. 4. c. viii. 8. c. xviii. v. 19. c. xxix. v. 7, 8. Pro. vi. 30. c. xi. v. 1. v. 15. v. 26. c. xvi. v. 28. c. xviii. v. 8. c. xix. v. 5. c. xxii. v. 1. 7. Ecclef. v. 8. Isai, v. 8. c. xxxii. Jer. ii. 32. c. vi. v. 16. c. xxi. 22. c. xxxii. v. 12. Ezek. xxxii. 27. c. xxxiii. v. 15. c. xlvi. v. 2.—v. 18. Dan. v. 9.—Zeph. i. 8. Zach. v. 3. Mat. xiv. 6. c. xx. v. 20. c. 22. v. 5. c. xxv. 1. Mar. xiii. 35. Lu. xii. 14. v. 59. c. xv. v. 22. v. 25. Jo. vii. 51. c. viii. v. 10. Acts iii. 1. c. ix. v. 2. c. xii. v. 20. c. xiii. v. 15. c. xvi. v. 4. c. xvii. v. 9. c. xviii. v. 14, 15. c. xix. v. 38, 39.—c. xxiii. v. 5. c. xxiv. v. 1, 2. v. 27. c. xxv. v. 16. v. 20. v. 27. c. xxvi. v. 32.—Rom. iv. 15. c. vii. v. 2. v. 3.—c. xii. v. 10. v. 13. v. 17. 19. v. 18. c. xiii. v. 1, 2. 1 Cor. v. 2, &c. c. vi. v. 4. c. ix. v. 7. 9. c. xi. v. 3. v. 4—14. c. xiv. v. 34. 2 Cor. xiii.

Many other customes, and lawes, of the Hebrews, wherunto ours have a resemblance, doe occurre in the holy scripture. And some, also in the bookes which are not held canonicall. As "the searching precedents, in the bookes of fathers; before a buisnes be determined." Ensignes of honor: to weare purple; to ride in a chariot; to weare a cheyne; to sitt next the king; to be called the king's cousen. Punishment, of hanging. Churchemen, free from taxes. Punishments by death, penalties, and imprisonment. Proclamation to appeare, on paine of confiscation of goods. He that read the law of the Lord, before the people; fate honourably before them. Contracts of marryage, under hand and seale. Solemnity of weddings. Marryage portion. A hard judgement have they that beare rule. Father's, and mother's honor, and authority, over their children. Reverence, to superiors. Suerties, must pay. Primogeniture, honored. Hear, before determine. Giving of almes, commended. A man's garment, and his excessive laughter, and going, declare what person he is. Against swearing. Fower formidable things; treason, sedition, false accusation, jealousy. Three things to be grieved for; a soldier in poverty, a wise man not sett by, and an apostate of suertiship. Cheerfullnes, commended. Hospitality blessed, and against a niggard. The musique att feasts. Home, to be loved. Physitians, honored. Care of burialls. Artificers, necessary in citties. Staple commodities. Beggars, forbidden. Learning, highly valued. Tombes, not to be violated. Collars of gold, were ornaments. Healths, drinking. Tombes, and escucheons. The king's prærogative: to give offices; to have all writings, in the countrey, made in his name; to be clothed in purple; to weare gold; to call congregations; to weare a collar of

xiii. 1. Gal. iv. 1. Eph. iv. 28. Col. iii. 2 Thes. iii. 10. 1 Tim. ii. 12. c. iii. v. 5. c. v. v. 8. v. 17. v. 18. c. vi. v. 1. Tit. ii. 9. Heb. vi. 16. c. ix. v. 16. 1 Pet. ii. 14. c. iv. v. 9. Jude, 9.

gold.

gold. Coyning of money. Cupboards of gold, and silver, plate. Banquetting, in celebration of the king's birth^w.

There are very many of the like passages, touching the customes, and lawes, of the Hebrewes; wherunto those of our countrey have so great a resemblance, that it gives the more weight to that opinion: that our lawes, usages, and common councills, have their originall, and foundation, from those of the Hebrewes. To which I shall not adde, in this place, the great similitude of our parlements; in the constitution, power, and priviledges of them; to the jewish publique councills. The same appearing in the severall places, where they give occasion to be particularly noted; and many of them are before observed.

From these resemblances proceedes that opinion of our customes, lawes, and common councills, being derived from those of the Hebrewes.

The like is conjectured of those in Scotland; which are in effect the same with ours; and the antiquity of them deduced from the time when the northerne people first invaded, and planted, in that part of this island; and gave themselves the name of Scots. That those northerne nations, and the Swedes and Gothes, were of old time called Schithi, and Sciti, and Suevi, and Scithians; as well, as Swedes; is agreed, by many writers. The Graecians called all

^w Esdr. ii. 21. 26. c. iii. v. 6, 7.—c. vi. v. 32. c. viii. v. 24. c. ix. v. 3, 4. v. 45.—Tobit vii. 14. c. viii. v. 19. v. 21. Wisd. vi. 5. Ecclesiasticus iii. 3. c. iv. v. 7. c. viii. v. 13. c. x. v. 21. c. xi. v. 7, 8. c. xii. v. 3. c. xix. v. 28.—c. xxiii. v. 9. c. xxvi. v. 5, 6. v. 29. c. xxix. v. 1, &c. c. xxx. v. 16, &c. c. xxxi. v. 23. 27. c. xxxii. v. 3, &c. v. 13. c. xxxviii. v. 1, &c. v. 16, 17. v. 32. c. xl. v. 28. c. li. v. 28. Baruch. i. 1 Mac. x. 8. c. xii. v. 11. c. xiii. v. 27, &c. c. xiv. v. 42, &c.—c. xv. v. 6. v. 32. 2 Mac. vi. 7.

the northerne people Scythians; perhappes from shooting: and by tradition from the Scythians themselves, they had very antiently a generall name titling them (Scotots), which is soone contracted into "Scots".

Whosoever shall peruse their bookes, and authors; and compare them with ours, and with the more northerne countreyes; will find as great affinity between the lawes, and customes of those countreyes; as there is betwixt ours, and Scotland. Which raiseth the opinion, of the antiquity of their lawes, and parlements; and that their's, and our's, are both from one originall.

For their antiquity, besides what is before noted; it appeares that the Gothes, and Danes, came into Scotland with their king Fergus: and, that their second king, Feritharis, enacted by a publique councill, touching the government of the kingdome by the next of kindred; "gif the sons of the king departed were so zoung, that the could not rule".

The nobles of Scotland, whom Salterne mentions to have bin antiently called Thaines, (as with us;) and afterwards, barons: and the old booke of their lawes, which is said to be a transcript of our law booke Glanvill, informes us; that all the barons graunted to the king wardship, and relief^z: and this was very antient, as tenures were, both with us, and them; and this graunted by a parlement of that time. Butt, under king James the first, king of Scotland, it was enacted about 300 years since: that the small barons, and free tenants, neid not to come to parlement, nor generall counsell; "sua that of ilke shirefedome their be send, chosen att

^x Illustrations on Polyolbion, Seld. f. 122.

^r Chronicle of Scotland, an. 404.

^z De antiquis Brittan. legibus. c. 6. f. 16. Regia majestas. Leges Malcolm 2. c. 1.

Omnes barones concefferunt wardam, et relevium.

the second head court of the shirefedome, twa, or maa wise men, after the largenes of the shirefedome^a." This was not long after the time when the lesser barons were excluded out of our parlements; and that, (as some hold,) by a law in the latter time of king John; and when they conjecture began the elections of two knights of every shirefedome, or countey, with us. Butt of these things there can be no other, butt a doubtfull conjecture. It may give some light to the affinity between our's, and their lawes, customes, and parlements; especially if the before mentioned author judge aright: that as it was in the south parte of Brittain; so was it in the north, as appears by their histories. They had (saith he) "kings, priests, nobles, and parlements agreeable to the forme of government of the most antient kingdomes; and, to the lawes of God, written in nature and scripture. And in this forme, (saith our author,) consisteth the estate of both these two kingdomes." And if the lawes, customes, and counsell of England were derived from those of the Hebrewes; so were those of Scotland likewise: and if, from the Hebrewes; then of divine institution. For it pleased God himselfe to declare, and give to his people, their lawes by his servant Moses, in the perticular cases before the giving of the law in mount Sinai; and, in that mount; and, afterwards; immediately from himselfe: as is noted in perticulars, in other places. And the originall, and institution, of their sanhedrim, and other publique counsell, appears also in the holy story. Moses being weary of bearing the burden of the people alone, bicause of their murmurings, makes a passionate complaint unto the Lord. "Wherefore hast thou afflicted thy servant? The burden is too heavy for me to beare: If thou deale thus with me, kill me." The Lord gracious, and mercifull, to ease his servant, and satisfy his prayer; gives him directions. "Gather unto me 70 of the elders of Israel, &c." Moses gathers

^a Parl. 7 Jac. 1. c. 101. Seld. tit. hon. f. 848.

them, and fetts them round about the tabernacle. Then the Lord came downe in a clowd, and spake to him; and tooke of the spirit that was uppon him, and gave it to the 70 elders; and they prophcyed^b. And surely this will be admitted of God's owne institution. And it was very antient; (as is conceived,) about the latter end of the second moneth in the second yeare after their comming out of Ægypt: as is collected from the precedent chapter. "That on the 20 day of the second moneth, in the second year, the clowd was taken up: and the children of Israel tooke their journey, out of the wildernes of Sinai; and the clowd rested in the wildernes of Pharam^c." Then presently, in the next chapter, is the institution of the sanhedrim. And by this, the place also appears to be the wildernes of Pharam; which was, (as some doe hold,) about the midst of the direct way or journey from the redde sea, unto the land of promise; about the 30th station, or place where the people stayed. Some hold it to have bin in the yeare, of the world, 2449; others in the yeare 2500. Either is of sufficient antiquity^d; and there is much variety heerin among the chronologers; and, whether it were in the moneth of May, or in June. Butt of these particulars a curious, and exact, disquisition is not necessary either for publique use, or for my private purpose: and therefore, I passe them over. Doubtles this councill was of God's owne institution: and so were those other generall assemblies, and councells, which we meet with in the holy story, and are perticularly mentioned upon other occasions; and where God is pleased to commaund Moses, and others of his servants, to gather the congregation together, that is, the deputies of the people, as is elsewhere noted^e; which surely are to be taken of his owne institution.

^b Num. xi. 10.—v. 11. v. 14. v. 17.—v. 16. v. 24. v. 25.

^c Num. x. 11. v. 12.

^d Hieronim. epist. ad Faviol. 127. mans. 13.—

De synedr. Seld. l. 2. p. 204.

^e Lev. viii. 3. Numb. x. 7. & xvi. 24.

& xxvii. 19. & xxxi. 26. & xxxv. 24, 25. Jos. xx. 6. 9.

And from these patternes, some holde, was the institution of their lawes, and common councells, generally in most nations: and theruppon they would deduce the originall of them, from divine institution.

A ground of this opinion they take from those many places in scripture, which are full of encomions of counsell; and, the happy consequences, and blessed fruits, of counsell^f.

Gothofred, upon this subject, hath this meditation. That although there is none sufficient for governement without counsell, but He alone who is all sufficient in himselfe, and for his creatures; to give lawes, to distribute justice to all, &c.; who hath no need of any vice roy, or counsellor, nor maketh use of any in his empire, either in determining or directing, according to that of the prophet; Who hath directed the spirit of the Lord, or being his counsellor hath taught him? with whome tooke he counsell? and, that of the apostle, Who hath known the minde of the Lord, or bin his counsellor^g? “Yett (saith our author) in the meane time, according to the good pleasure of his will, as he is the God of peace and order; not for himselfe, butt as a helpe to us; he hath constituted divers estates,”^h &c. and if so; then they inferre, that councells have, in a peculiar manner, their institution, and originall, from divine authority.

Moses the great prophet, and prince of Israel, is a competent judge of the good of counsell, wherof no man had greater experience than himselfe: as in that of his father in law; and in those constant councells, wherewith God himselfe vouchsafed to direct

^f Psal. xvi. 7. Pro. xi. Isa. xi. 2. Jer. xxxii. 19. Dan. ii. 14. Neh. vi. 7, &c. ^g Lib. i. p. 4.—Isa. xl. 13, 14.—Rom. xi. 34. ^h Goth.

l. i. p. 4. Interim pro suo beneplacito, qua Deus est pacis et ordinis; non sibi, sed nobis, in auxilium constituit diversos ordines.

him. And he was as fencible of the evill in the want of them; which caused him, speaking of the calamities and evils of a nation, to say: "they are a nation void of councell; neither is there any understanding in them¹." And finding his owne want of assistance, to beare the burden of government, notwithstanding his great abilities: upon his prayer to God, he was pleased to institute the sanhedrim; and commaunded him, upon fundry occasions, to call together the congregation, and the elders, fathers, officers, judges, heads, and deputies of the people; which was done by Moses, and his successors. And the like was done, and this patterne imitated, by most nations; which is used as an argument of their lawes, and councells, having their originall from divine institution.

For this, arguments are also drawne from the Hebrewes planting of themselves; and becomming the founders both of nations, and governments, in diverse other countryes. And from the discent of other nations from the same stocke with them; from their father Abraham. Of this sorte the Lacedemonians appeare to be. In the letter of Arius their king, to Onias the high priest of the Jewes, it is expresse: that it is found, in writing; that "the Lacedemonians and Jewes are brethren; and that they are of the stocke of Abraham^k." And Josephus affirms; that "reading the antient scripture, we find, that the Jewes and Lacedemonians came from one originall, and had sociable familiarity with Abraham^l." Glennius hath it thus. "Our originall, and also our stocke, is not forein from the posterity of Abraham^m." This alliance between the Jewes, and Spartans, was likewise acknowledged by the Jewes; wherof Josephus asserts, that "they wanted no proove of this matter, be-

¹ Deut. xxxii. 28.^k 2 Maccab. xii. 21.^l Lib. 12. c. 5.^m Nostras origines, et nostrum quoque genus non esse alienum; à posteris Abrahæ.ⁿ Lib. 13. c. 9. ¹ Maccab. xii. 9.

lieving it to be so by the holy scriptures". That the Spartans had right, att their forein tribunall, I passe over; and the conjecture of their pedigree from a son of Hagar; or, from Nachor, Abraham's brother. It is agreed, that they were discended from the stocke of Abraham, and were very conversant with the Hebrewes. From whence the before mentioned opinion collects; that probably they might have from them, (especially where there is so much resemblance,) their formes of government; that from the Græcians the Romans received their policy, (as Gothofred, and others, testify;) and that the Romans gave formes, and policy, to most parts of the worlde.

Others have derived the formes, and policy, of the Hebrewes, more immediately to other nations; and affirme, that the Jewes, even where they were captives, yett gave religion, and lawes, to their conquerours. Which Seneca doth admire^o; and Piedro Mexio remembers the passages relating heerunto. As of Daniel, with the Assyrians; of Cyrus king of Persia; of Alexander the great, whom Quintus Curtius reports to have fallen on his knees before Jadus, the high priest; and to confesse, that the jewish lawe was good; butt, the græcian lawe was of no worth: Of Ptolomy, who caused all the bookes of the Old Testament, to be translated out of the hebrew into greeke, by the 70 interpreters; a very antient manuscript copy wherof is now in the king's library of St. James, which I preserved from sale, and returned to the right ownor: and besides this, it is held, that there is butt one copy more, now remaining, in the Vatican. With this copy I had the opportunity to furnish those very learned persons, who lately published that excellent great bible, in the easterne tounes. And for this copy I could have had

^o Lib. de superf.

many hundreds of pounds, if I would have bin corrupted to part with it ^P.

Butt I aske pardon for this digression; and shall note the reason given by some, why the Jews, though captives, did bring divers kings and people to discern their lawe. Some divines hold, that their captivities were permitted by God, to the end that the Jewes should beare testimony, in all quarters of the earth, that the histories of the Old Testament were true; and that the God of the Jewes was the only true Gnd. And this is likewise brought for an argument, that the originall of most formes of government is from them.

On the other side they note; that the Romans, where they were most absolute conquerors, yett permitted the natives to injoy their old lawes, and customes: which is generally true. And the originall of the Romans themselves is derived not only from Abraham, butt from the seed of Jacob, out of the tribe of Benjamin: which they gather out of an antient greeke manuscript mentioned by Photius. That "the tribe of Benjamin, settled in Palestine, did spread it selfe unto the parts of Italy; and gave the name

^P To this curious anecdote it is proper to add: that in 1757, his late majesty, George II. gave this invaluable manuscript, (in four volumes,) together with the whole royal library of manuscripts and of printed books, and the reversion of the post of king's librarian with a salary of 300l. per annum, to the British Museum for ever; where they are now preserved, for the use of the publick. And it may not be improper also to mention what the learned of this nation are concerned to know; viz. that his present most gracious majesty, (besides a benefaction of 1200l. in money, and a curious collection of ægyptian antiquities,) has likewise given to the said Museum, for the use of the public, a general collection of the books and tracts, (containing 32,000 articles bound up in about 2,000 volumes) printed and written in England between 1640, and 1660; being the busy times of the life of our author, Sir Bulstrode Whitelocke. (M)

and originall to Rome, and to the roman nation." Then he mentions "a certaine man whose name was Ros^a," who was of that tribe; and growing powerfull in Italy, gave the name to Rome, and to that nation; butt this latter part receives opposition. Many doe mention the Romans, as the posterity of Esau; and the name of Edom, is frequent with their writers, and with those of the antient Hebrews; who mention the names of Romulus and Remus, builders of Rome^r. And whatsoever may be judged of the genealogy; it is evident, that the Jewes, and Romans, had much conversation, and commerce together; and very many also of the other nations of the world: and that there was great affinity in their language, sacred rites, and lawes, unto those of the Hebrewes.

Of their oaths, and the resemblances to them, much is written; and of the extent of their language, and the likeness of the heathen's idolatries to some of the Jewes sacred writes, in worship and sacrifices^s. The Tyrians, Lacedemonians, and other nations chayned their gods, that they might not depart; some hold, in imitation of the Jews, whose holding it unlawfull to pronounce the essential name of Jehovah, and instead thereof reading Adonai, to prevent the blaspheming of that name; this the heathen thought, (I know not upon what ground,) was to prevent their God, from departing from them; and therefore the heathen chayned up their gods, to keepe them from going away.

From Jehovah, the heathens learned to denominate their idol gods, Jove, Jao, Iaw, Jaoh, Ιαώια, &c. So, is held, came the opinion of the heathens, of pleasing their gods by sacrificing their children, from Abraham's offering his son Isaac: intimated by a

^a Patriarch. Constant. epist. 102.—ἀνὴρ τὸς ὄνομα Ρῶς. ^r Gemar. Hierosolim. & Gemar. Babilon. ad tit. sanhedr. c. 2. f. 3922. Misdrach, can. 1. b. ad tit. aboda, c. 1. f. 39. col. 3. ^s L. 2. de syn. Seld. c. 11. Godwyn, Jewish antiquities, l. 4. c. 2. 3. De diis Syris, Seld. c. 2.

rabbi who brings in God, speaking concerning Molech, after this manner. "I never commaunded, that they should offer up their sons, for an oblation; and I never spake it to any of my prophets. And when I spake to Abraham, to offer his son, it entred not into my heart, that he should doe it: but, to make knowne his righteousness." And Porphirie, treating of Saturne, (who seemes to be Molech,) saith, that the Phœnicians called him Israel; and that he had by Anobreth one only son, called Jeud, (from the hebrew Jachid, signifying an only begotten, and applyed to Israel,) whom he offered upon an altar purposely prepared. "Who seeth not (saith our author) the story of Abraham and Sarah, under the names of Israel and Anobreth; and the immolation of Isaac, under the name of Jeud; and the originall of this son sacrificing divinity, to have bin the unwarrantable imitation of Abraham." Their gods, Molech, and Baal, are thought to be the same; and derived from the hebrew, where Melech signifies a king, and Baal, a lord or master. Jupiter was called by the Phœnicians, Baal Samen; which name is held to be derived from the hebrew Baal Shamin, that is "Lord of Heaven," from "Baal" Lord, and "Shamaym" heaven, Jupiter Olympicus*.

The prophet sayth, "ye have borne the tabernacle of your Moloch:" which denotes ceremonies exhibited by them to their gods, by carrying their idols up and down in tabernacles, after a solemne manner of proceffion*. Which solemnity was likewise used by the Romans, and termed pompa; and the tent, in which the idol was carryed, thenfa†. And this kind of idolatry may seeme to have had it's originall among the heathens, from an unwarrantable imita-

* Jewish antiquit. Godwyn, l. 4. f. 180. — Rabbi. Solomon Jarchi. Jer. vii. 21.

† Gen. xxii. 2. Euseb. preparat. evangel. l. 1. c. 7.

שמים, בעל.

* Amos v. 26. Acts vii. 43.

† Thenfa, deorum vehiculum.

tion of Moses, his tabernacle; which Josephus saith, was nothing else but a portable temple, to be carryed from place to place². Besides these, many other superstitions were derived by the heathens, from the true worship of God, which he had præscribed to his people. God had his temples, tabernacle, altars and sacrifices; so had the heathen. And whence could they learne those rites, butt from the Hebrewes, to whom God had injoynd the true use of them. God had his fire ever burning uppon the altars; so the heathen had it, preserved by the vestall votaries. God had his propitiatory, or mercy seat; they had their sacros trypodas, oracles, from whence the divell would speake to them that served him.

Butt I may be censured, to have too long insisted on this matter: I shall therefore summe it up. That as in other rites, and usages; so perticularly concerning counsellors, and senators, there was great imitation, by other nations, of those institutions which were among the Hebrewes. They had their sanhedrim consisting of elders, chosen out of every tribe; and other common counsellors, wherein the people had their deputies: of both which it is more fully discoursed in other places. Their elders, princes, heads of tribes, and families, chiefe of fathers, who were members of their common counsellors, were the first borne of families. In imitation wherof there seemes to have bin an universall consent, both in the easterne and westerne, and northerne parts of the world, in most nations; in the constitution, names, power, primogeniture, and qualities of their counsellors, and counsellors.

The Hebrewes chose them, out of the severall tribes. The Græcians, Romans, and other nations divided their people into tribes; and out of them were the senators chosen. The first Hebrewes had their zickne³, or presbiteri, seniores, elders; the Persians called

² Antiquit. l. 3. c. 5.

³ זקני.

their's

their's zic or cheque. The Græcians tited their's *πρεσβύτεροι*; the Latines, their's *senatus*, *senes*, *seniores*, *senatores*, for senate, and senators; and from thence are the words, *seigniori*, *seigneurs*, *seignor*, *fire*, *fir*, among the Italians, French, Spanish, and English who tearmed them also *Ealdermen*, or *aldermen*, that is "elders or eldermen." And so the Germans, Swedes, Gothes, and other nations say *aldrymen*, for "elders." All agreeing in that title, for their chiefe men and senators: and the eldest of each family, of those persons, is inheritable to their father's title; and, to the privilege of being senators. Butt these perticulars are more largely noted uppon other occasions. Uppon the whole matter, the inference is rayfed. That the institution of councells among the Hebrewes, and their lawes, and customes, being most of them by the præscript of God; and there being in this kingdome, and in most other nations, so great an imitation of the rites, usages, and customes of the Hebrewes; so great a resemblance to many of their lawes, and perticularly to their forme of politie, and common councells; it is from thence collected, by those of that opinion; that "the originall of most lawes, customes, usages, and common councells, was from the Hebrewes; and if so, then, from divine institution."

Butt I may be judged to have dwelt too long, on this argument. My apology is, the honor of my countrey, and the unusuall matter of this subject; which may the sooner procure my pardon.

C H A P. LXXXIX

By the favour of God.

COUNCELLS are of two sorts. Some are against God, and those he confounds; others are for God, and those "he favours." Of the first sort was the councill of the people, under Nimrod; "lett us make us a name," &c^a. This was not "for God," but against his honor; for themselves, in pride, to make them a name; not to honor God, butt themselves: and whatsoever is counsell'd in pride is against God. So was this councill: and therefore the counsellors became confounded in their language, and scattered uppon the face of the earth; and the building which they counsell'd and began, was left off, and came to nothing.

The interpretation of St. Cyrill uppon this text is: "That God discended, and confounded the language: not as fearing any thing to himselfe; butt as doing good to them, that they might desist from their vaine labour^b." They built "for themselves," not for God; not for the glory of his name, butt of their owne. What will not the pride of man's witt dare to do, indulging it's owne ambition? Butt "God, (saith the expositor,) brings all such councells, and designes, to naught; and makes them to become of no effect^c." God can soone darken councells, by words without knowledge:

^a Gen. xi. 4.^b Contr. Jul. l. 4. p. 524.^c Paræi comment. in

Gen. xii. 4.

and the psalmist saith, that the Lord bringeth the counsellors of the heathen to naught; for they are against God. So the crafty counsellor against the people of God, which is against God, David saith became vaine and fruitles^d. And the Lord, speaking of the evill counsell taken by Syria, Ephraim, and the son of Remaliah, against his people; saith "it shall not stand, neither shall it come to passe." The prophet saith; "surely, the princes of Zoan are fooles; the counsell of the wise counsellors of Pharaoh is become brutish^e:" and the reason is, bicause their counsellors were against God; though as to men they might be wise. Achitophell was a very wise counsellor; and his counsell is said to be "as if a man had inquired at the oracle of God^f. So was all the counsell of Achitophel both with David, and with Absolom." Yett when he counselled Absolom, against the commaundement of God, in rebellion against his father; then God turned his counsell into foolishnes; and confusion followed both to the counsellor, and to those whom he thus counselled; for it was "against God." And therefore the Lord had appointed to defeate the good counsell of Achitophel; to the intent, that the Lord might bring evill upon Absolom^g. And God himselfe saith of the counsell of Judah, and Jerusalem, when it was against him; "I will make it voyde^h."

The prophet speaking of those men who devise mischief, and give wicked counsell in the citty, denounceth fearfull judgements and confusion against them. "Ye have feared the sworde; and I will bring the sword upon you. I will deliver you into the hands of strangers. Ye shall fall by the sword, &cⁱ."

^d Pro. xxxviii. 2. Psal. xxxiii. 10.—Psal. lxxxiii. 3.

^e Isa. vii. 5. & xix. 11.

^f 2 Sam. xv. 16.

^g 2 Sam. xvii. 14.

^h Jer. xix. 7.

ⁱ Ezek. xi. 2.

—v. 8. v. 9. v. 10.

When the young counsellors of Rehoboam advised him to say unto his people: "my father made your yoke heavy; and I will adde to your yoke. My father also chastised you with whippes; butt I will chastise you with scorpions^k." This being counsell against the mind of God, and to oppresse his people; (and what is against God's people, is against God;) confusion followed this counsell, and all Israel made a defection from their king: and the text saith; that "the cause was from the Lorde."

It is said of Ahaziah; that "he walked in the wayes of the house of Ahab; (the which were against God.) For, (saith the text,) his mother was his counsellor, to doe wickedly. Wherefore he did evill in the sight of the Lord, like the house of Ahab: for they were his counsellors, after the death of his father^l; and their counsell, being against God, produced confusion, and "distruction" to him that followed them. And the wise man gives the instruction; that "there is no wisdom, nor understanding nor counsell against the Lord^m."

Upon the text before noted, of Nimrod's subjects; the expositor giveth good admonition. "God, (saith he,) resisteth the proud, and rash." Proud and wicked counsells are the tower of Babel: they who take them, doe build that tower; and shall have like successe. Let us therefore doe things proper; and for the safety of the commonwealth, the church, and our neighbours; in the feare of God; with humility, and modesty. So shall we find happy events of all our actions, and counsells: and the favour and blessing of God will be upon them, and upon all counsells which are "for himⁿ."

^k 1 Ki. xii. 14.

^l 2 Chron. xxii. 3, 4.

^m Pro. xxi. 30.

ⁿ Paræus, in Gen. xi.

The psalmist asserts, that “the counsell of the Lord, (that which is for him,) standeth for ever^o.” His son saith the like: “there are many devices in man’s heart, butt the counsell of the Lord, that shall stand^p.” And the prophet reports it from the mouth of God: “my counsell shall stand^q.”

Our writ mentions this common councill, in the summons of it, and in the matters to be ordained; to expect, and hope for “the favour of God.” And doubtles there is no other hope, or expectation of counsell to be happy, butt where God is the beginning of them; and his glory the subject, and end, of them. When the men of Israel made a league with the Gibeonites, it is noted; that the men tooke of their victuals, and asked not counsell of God: Therefore their not beginning with God proved not happy, in the end of their counsell; butt occasioned the people to murmur against the princes^r. Butt where they looked up to God, and expected his favour in their counsells, they were prosperous: wherof the scripture affordes many instances^s. This was the constant practise of Moses, Joshua, the judges, and good kings; and, of all the prophets, and servants of God: to aske councill of him; and to expect his favour, in all their consultations in their weighty matters. The many instances wherof are not unknowne to those, who are versed in the holy story: and the manner of the Hebrewes consulting of God, by the urim, and thummim; and expecting his favour thereupon^t. David, when the great assembly of the people came to him, to Hebron, to make him king; the first thing done in this common councill is: David maketh a league with the elders, and that “before the Lord, favente Deo;” and then they annoint him king^u. And when he consulted about bringing the

^o Psal. xxxiii. 11.^p Pro. xix. 21.^q Isa. xlii. 10.^r Jos.

ix. 14.—v. 18.

^s Judges, xviii. 5. & xx. 18.^t 1 Sam. xiv. 37, &c.^u Schiccardus, jus reg. Hebræor. c. 1. p. 11. Seld. de syn.^v 2 Sam. v. 3.

arke from Kirjahjearim; this, being for God, had the favour of God upon it: the thing seemed right in the eyes of all the people; and the arke was brought up to Jerusalem, with great solemnity, and rejoycing. His son held a councill, about the same buisnes, the bringing of the arke of God into the temple which he had built, and the dedication of the temple^w. This being for God, his favour was upon this councill; it was unanimous, and executed with great joy, and gladnes. And the approbation of it by God appeared in a special manner; the clowd, and the glory of the Lord filled the house of the Lord. And this councill, "by the favour of God," had a blessed conclusion: "the king blessed all the congregation." And "they feasted, and rejoyced together; and on the eight day, he sent the people away, and they blessed the king^x." And where the king, and people, expect "the favour of God" upon their counsell: they will blesse one another, and God will blesse them; and it will be with them, as it was with the men of Israel in this text. "They went unto their tents, joyfull, and glad of heart; for all the goodnes that the Lord had done for David his servant, and for Israel his people."

When Hezekiah held "a common councill with the princes, and people," about the buisnes of God, the keeping of the passe-over; all agreed to it, and established a decree for it. And the conclusion was, "the priests and levites blessed the people, and their voice was heard; and the prayer came up to his dwelling place, even unto heaven^y."

The disciples of our Saviour meeting with 120 persons, who had received the faith of Christ; after prayers, and supplications, and

^w 1 Chron. xiii. 12.—1 Ki. viii. 1. 2 Chron. v. 2.

^x v. 10, 11. 1 Ki.

viii. 14. v. 66.

^y 2 Chron. xxx.—v. 5. v. 27.

expounding of scripture in that common councell: they went to choose an apostle in the place of Judas, to be a fellow labourer with them in the worke of Christ. And there it was said, that “of these men which have accompanied with us, all the time that Jesus went in and out among us, be ordeined to be a wittnes with us of his resurrection. And they appointed two, Joseph, and Mathias: and they prayed the Lord, (who knowes the hearts of all men,) to show whither of these two he had chosen; that he may take possession of his ministry, and apostleship. And they gave forth their lotts, and the lott fell uppon Mathias, and he was numbred with the 11 apostles².” Heere is a way worthy the imitation of the proceedings of a councell; and the buisnes being wholly “for God,” he vouchsafed his favour and blessing to it; for the increasing of his owne honor, and the kingdome of his deare son. A like assembly, and common councell, was that where the twelve called the multitude of the disciples together; and propounded to them, to “looke out among themselves, 7 men of honest report, full of the Holy Ghost, and wisdom, to be deacons—the saying pleased the whole multitude, and they chose the 7—and the word of God increased^a.” So when the dissention was touching circumcision; “the apostles and elders came together, (in common councell) to consider of this matter.” Which was for God; and he therefore so favoured them, that they determined the controversy; and sent chosen men, of their owne company, with letters to the churches of their resolutions, which pacified the dissention; and the gospell was promoted^b.

That many of our English parlements have bin “with the favour of God;” when their councells were for God, and his honor;

² Acts i. 14, 15, 16. 21.—v. 23.—v. 24.—v. 25.—v. 26.
—v. 5.—v. 9.

^b Acts xv. 6.

^a Acts vi. 1, 2.

and those times were prospered by him; appears in sundry passages of our records, and histories. This island is therefore stiled "the first, of all the provinces, that received the faith by publique ordinances, and consent".

Some affirme the first plantation of the christian faith heere, to have bin by St. Peter. Others, (perhappes more probably;) that St. Paul preached the gospel heere. Others mention the comming hither of Mary Magdalene, Lazarus, and Martha. And some hold, that the Druydes preached the gospell here. All these, or any of them, were very early appearances of the light of the gospell; and shew the favour of God then to be with us, and our common counsell; by whose ordinances, and publique edicts, the same was imbraced^d. Most doe agree, that Joseph of Arimathæa, who is stiled an honourable counsellor, was the first preacher of the gospell att Glastonbury; and that after some time it was, by generall consent, received. And few, (except some popish authors, who endeavour to invalidate the testimony,) will deny the receiving of the gospell heere, by Lucius, the first british christian king; and that about the year after Christ 185, and by the "councell of his kingdome." About the year 464, Aurelius Ambrosius, having defeated Hengist, called the consuls, and princes of the kingdome to Yorke^e: and there, by common counsell, ordeined the restoring of the christian religion; and, rebuilding of the churches, which the pagan Saxons had destroyed.

^c Marcus Sabellicus, in Ennead. 7. l. 5. Bale Vot. l. 2. Bede hist. Angl. l. 1. c. 4.

^d Metaphrastes. cent. 1. pt. 7. dist. 8. Gildas de Con. Brit. Sophronius, serm. nat. Theod. l. 9. Origen. in Ez. hom. 4. Tacit. annal. l. 14. Cæsar's com. l. 6. Hector Boetius, chron. l. 2.

^e Mat. Westm. Galfr. Mon. Ponticus Verunnus—Bp. Jewell. Foxe, Acts and monuments. Bp. Usher antiquit. eccles. Brit. per concilium regni. Mat. West. Hen. Hunt. Galfr. Mon. Convocavit consules, et principes, regni.

King Ethelbert, about the year 607, is sayd to be the first Saxon christian king “by the counsell, and consent, of his people:” and he reigned 56 years, in great prosperity. The first law that he made, by the counsell of his wise men, was “for God, his church, and ministers^f.”

All the charters of the saxon kings, made in their parlements, graunting lands to monasteries, were with great devotion; and are so remembred by our historians. The same is noted of those common counsell, which graunted “circsett^g,” and tithes, unto the churches: and, that those times were of all others the most prosperous, especially as to the clergy. And surely in the saxon lawes, yett extant, are to be found more expreffions of piety, and devotion; more of scripture, and duety to God; than in some others of a later edition.

Kenlis, a prosperous king of the west Saxons, received the faith by “common counsell, and assent, of his people,” baptized with him. And king Sebert, of the west Saxons, and his people, by “mutuall consent” imbraced the gospell; and prospered. Edwin king of the Northumbers, uppon the perswasion of Paulinus, called a common counsell, to advise uppon it: and the nobles, elders, counsellors, and wise men debating it, and giving their votes for it; “the king and his counsell, and people,” received the faith; and injoyed with it both outward, and inward prosperity, and comfort^h.

In almost all the preambles to our printed statutes, it is rehearsed; “to the honor of God,” &c. Many passages of the like nature

^f Bede, hist. Angl. l. 2. c. 5. & Hen. Hunt. &c. Spelman. concil. tom. 1. p. 127.

^g Cyric-sceat, ecclesiæ census. Benson. Sax. vocab. (M)

^h Bede hist.

Angl. l. 3. c. 7. Bede, l. 2. c. 3. Spelman, concil. p. 127. Bede, l. 2. c. 12, 13,

14. Mat. West. Malmesb. Huntingd. &c.

might be remembred in other times. The chieftest wherof are those memorable acts of our parlements, in E. 6. and queen Elizabeth's time; wherby the glorious light of the gospell was cleered from many dark errors of the practise of former ages; and brought to appeare in its owne brightnes and lustre, by the blessed reformation by those parlements begunne, and ordeined; and by succeeding parlements, in king James and king Charles I. their reignes, happily propagated: for which posterity will have cause to blesse God; and their memory will be pretious. Nor doe we read of any times more prosperous than those were; untill it pleased God for our sins, and abuse of his mercyes, to visit these kingdomes with his late heavy judgement of the sword, and civill discorde. And whosoever shall take the paines to looke into divine, and humane stories, (too many blessed be God to be heere inserted;) will find "the favour of God," uppon all those counsellis which have acted for God, and for the promoting of the gospel of his son.

The græcian stories relate an extraordinary zeale in those people, in sacrificing to their idol gods; and consulting their oracles, uppon all great affayres, before they undertooke them: wherby they held themselves more prosperous. Xenophon makes this piety the foundation, in Cyrus, of the persian monarchy: and Plutarch saith, it "made Alexander great."

Cicero acknowledgeth, that the Romans did not conquer so much by their numbers, strength, policy, and arts: as "by piety, and religion; and by this only wisdom, that they perceived all things to be governed by the deity of the immortal gods¹." Their sacrifices, and augures, are testimonies heerof; which preceded their engagement in any great affayre: nor would they permit the senate

¹ Sed pietate, ac religione, atque hac unâ sapientia, &c.

to sitt in any place, butt the temple. How they prospered, in their blind piety; their stories testify^k.

After the preaching of our Saviour to the world, we reade of the councells held by his apostles, and their disciples; whereby much peace to the primitive times, and the propagation of the gospell was, by the favour of God, promoted. And many pious councells were in the antient times held in this island; which are collected, and published by persons of great learning, and industry^l. And it is obvious in all stories, that where "the favour of God" was the end aimed att by publique councells; his blessing went along with them.

The Netherlanders never thrived more, than since they received the reformation of religion by publique edict. The like is noted of the Swedes; since their ricksdagh, by publique act, received the protestant religion. The like, some note of Scotland. This will be found an infallible trueth, in all places: that when their publique councells shall aime att God's glory; and the interest of Christ shall be promoted by them; they will have "the favour of God" to goe along with them; and to prosper all such blessed councells.

^k Rosinus, de antiquit. Rom. c. 6. p. 280.
primate of Armach.

^l Spelman concil. Dr. Usher,

C H A P. XC

Shall happen to be ordeined.

THE members of parlement are not, before hand, to make any compacts, or undertakings, what they will doe, or not doe. Butt what shall be propounded among them, when they are mett together; that is to be considered by them, that they are to deliberate uppon. And after a free debate, in full parlement; as their judgements shall be swayed by reason, and as God shall putt it into their hearts, so they are to ordaine; and therefore it is said; “shall happen to be ordeined.” The members come not to parlement prepared, or bespoken beforehand: butt as free counsellors, to give their votes, as their reason shall be satisfied; as they judge will most conduce to publique good. And the word “ordaine” is proper for all their determinations; either of advice, or which are judicall, or legislative. We find the word “ordinances” often used in our bookes of law, and in the records of parlement, in severall fences.

Littleton gives us the etimology of the word, where he saith: that “sometimes an assise is taken for an ordinance; that is, to putt certaine things into a certaine rule, and disposition; as an ordinance which is called the assise of bread, and ale.” And, in the comment

ment uppon this place, many ordinances of the like nature and appellation are remembred^a.

The king, and his councell, used to make ordinances; butt it seemes they were not binding, unles confirmed by parlement. Therefore in E. 3. time, it was enacted^b; "that all ordinances made by the king, and his councell, shall be by all the king's officers executed—and other ordinances are there repealed."

And the commons petitioning R. 2.^c that "against the horrible vice of usury, practised as well by the clergy as laity; the order made, by the major of London, may be executed throughout the realme: the king willeth, that those ordinances be viewed; and if the same be found to be necessary, that they be affirmed." And in H. 5. time it is enacted^d, "that the king, by his councell, shall have power to make ordinances touching the coyn, to indure to the next parlement." The lords made ordinances touching H. 6. and the duke of Yorke; to which the king assented: and it is enacted in R. 2. time, that ordinances made for Norwich, by the cittizens, shall be confirmed; so as they be profitable for the king, and people^e.

There seemes to have bin apprehended some difference betweene acts, and ordinances: as where the king willeth, that "the petitions of the commons 50 E. 3. be made in acts; for that some affirme them to be butt ordinances, and no acts^f." And where the chancellor demaunded of the whole estates, "whither they would

^a Sect. 234. Ascun foits assise est prise pur un ordinance f. pur mitter certaine choses en certaine rule, et disposition: sicome ordinance q'est appel "affisa panis, et cervisiæ."

^b 50 E. 3. rot. parl. n. 13, 14.

^c 14 R. 2. rot. parl. n. 24.

^d 2 H. 5. rot. parl. n. 12.

^e 39 H. 6. rot. parl. n. 27. 2 R. 2. rot. parl. n. 39.

^f 1 R. 2. rot. parl. n. 56.

have such things as they agreed on, to be by way of ordinance, or of statute;" who answered "by way of ordinance, for that they might amend the same att their pleasure:" and so it was^e. And although such "ordinances as were made by the great councell, (wherof there is a rolle 27 E. 3.) were afterwards confirmed by parlement; and ordinances by the king, and his councell, were not observed; and sometimes the commons were to view the ordinances before they were confirmed; and that no ordinance was to be made att the petition of the clergy, without assent of parlement:" yett generally ordinances, made by parlement, were taken to be of the same force with acts of parlement^h. The which nevertheless was opposed by the clergy, uppon this occasion. The prelates, in the time of arch bishop Stretford, made a canon, for the payment of tithe of all wood: butt in the parlement, with which that convocation was held, the commons petitioned, that none might be impleaded for tithe wood, butt where it used to be paid; and in the year following, complayned against that constitution. Three years after this, they petitioned againe, butt had no remedy: and being still vexed by that constitution, they petitioned, that a consultation might not be graunted [in] that case, uppon a prohibition; butt that was denyed. Butt uppon new petition of the lords, and commons, in 45 E. 3. the printed act was made which gives a prohibition, in case of demaund of tithes of *sylva cædua*ⁱ. Yett the clergy were not so contented; butt still troubled the laity for tithe wood, under pretence, that this was not a statute, butt an ordinance: which is recited in the petition of the commons, 47 E. 3; who pray the king "to affirme that ordinance, for a

^e 37 E. 3. rot. parl. n. 38.^h 27 E. 3. rot. parl. n. 1. Ib. 28 E. 3. n. 16.

21 E. 3. rot. parl. n. 16. 5. R. 2. rot. parl. n. 23. 51 E. 3. rot. parl. n. 46.

ⁱ 17 E. 3. rot. parl. n. 28. 18 E. 3. ib. n. 9. 21 E. 3. ib. n. 48.—25 E. 3. ib. n. 37.—45 E. 3. c. 3.

statute," to indure in time to come. And they put in a bill afterwards: that "no statute or ordinance be made, att the petition of the clergy; butt by assent of the commons^k."

Butt generally the word "ordinances" was taken for the same with acts of parlement, and statutes; and had the same force as statutes had; and were passed by the like consent of the king, lords, and commons in parlement: wherof there are many instances in our rolles of parlement, and in other records, which are not necessary to take up much of our time; butt are extant in the records, for those who shall thinke it materiall to looke into them^l. And if there be any difference between an ordinance, and a statute, as some have collected; it is butt only this: that an ordinance is butt temporary, till confirmed, and made perpetuall; butt a statute is perpetuall at first, and so have some ordinances also bin. And the same acceptation, which it hath with us, is given to it in other countryes, where an ordinance doth signify a lawe: as in that edict of H. 3. of France, where the king doth "say, appoint, and ordaine," the precedency of those of the bloud, before the other great lords of France^m. And the French call it ordonnance; the Italian, ordinanza; the Spanish ordenenza; the Germans, ordnung: and Suetonius used the word "ordinatio," for the government of a provinceⁿ.

^k 47 E. 3. rot. parl. n. 21. D'affirmer la dite ordinance pur estatut. 51 E. 3. ib. n. 46.

^l 15 E. 3. rot. parl. n. 13. 21 E. 3. n. 6. & 8. & 16. & 24. & 60. & 28 E. 3. n. 1. & 5. & 37 E. 3. n. 11. & 51 E. 3. n. 79. 1 R. 2. n. 20. 5 R. 2. n. 34. & 73. & 11 R. 2. n. 23. 48. 14 R. 2. n. 21. 15 R. 2. n. 28. 16 R. 2. n. 8. 17 R. 2. n. 25. 21 R. 2. n. 21. & 89. 1 H. 4. n. 144. 2 H. 4. n. 15. & 14 E. 4. n. 10.

^m Tom. 2. l. 1. tit. 5. des edicts des roys. Disons, statuons, et ordonnons, &c.

ⁿ In Neron. c. 40.

We meet with it in almost all our acts of parlement; and therefore it would be impertinent to recite any of them. And it is the constant word to this day in the enacting part; be it enacted, and "ordeined," by this present parlement, &c.; and most of the præambles of our acts of parlement, doe call them "ordinances."

C H A P. XCI

Upon the said affayres.

THE former notes upon the “affayres of parlement,” were of such as are consultative: the intertainment of this chapter may be of judicall affayres; reserving those that are legislative, unto another place.

The judicall “affayres” of parlement are more capable of bounds than the other: yet may be extended, (as please the judges,) to all matters both civill, and criminall, either in the first instance; or in the dernier resort, by writs of error, and appeale. Butt it hath bin the wisdome of parlement, in settled times, not to intertaine originall causes, or to judge of titles or private controversies; butt uppon adjournements to them, for difficulty; or complaint of parties, for injustice. And this judicall power hath resided in the house of lords; before whome the writs of error doe lye, and the records of inferior courts are removed upon occasion. Butt the lesser either house doth intermeddle with private rights, and causes originally; the more they pursue the example of their auncestors, and the grounds of the law: which gives not the power of ordinary judgements either to king, or parlement; bicause the power is too high, for private subjects to complaine, in case they have not right. Butt the king’s judges are sworne to doe right; and lyable to question, if they doe wrong: and therefore the law hath wisely

placed in them, the decision of ordinary causes in the first instance ; as most agreeable to the people's right, and freedome. And many alive can testify inconvenience, when it hath bin otherwise.

This judiciall power, in the publique councill of the nation, hath bin, from the beginning of our governments. Such judges were the old druydes, in Brittain ; who (as Cæsar testifies) did “determine all publique and private controversies. If any crime be committed, if any murther be done, if any difference be about inheritances, or bounds ; they both determine them, and ordeine rewards and punishment”. And all were obliged to performe, and submit to, their judgements.”

This judiciall power, in the Saxons times, appears in our stories, and in their acts, to have bin exercised by their Witenagemotes ; wherof two especiall precedents are remembred. One of a civill proceeding under Eldred, son to Edgar, about a title of lands ; and another case of criminall proceedings against earle Godwin, under king Hardicnute^b, and in the confessor's time : and frequently, the thanes, or barons, then gave judgements upon complaints, and suits, touching civill rights.

Horne describes the judiciall power of our parlements. That the king hath companions, to heare, and determine, att his parlements, “all the writs and plaints of the king, of the queen, and of their children ; and especially of those wrongs, wherof one cannot otherwise have common right”. Which latter part is essentially

^a De omnibus publicis, privatisque, controversiis constituunt. Si quid est admissum facinus ; si cædes facta ; si de hæreditate de finibus controversia est ; iidem decernunt, præmia pænasque constituunt.

^b 2 Tit. hon. Seld. f. 633.

^c Mirroir

de justice, c. 1. § 2. Touts les breves, et plaints de torts, de le roy, de la royne, et de leur enfans ; et d'eux especialement, de qui l'on ne poit auer autrement common droit.

proper for the parlement; when common right cannot be had, either for difficultie, or otherwise, in the inferiour and ordinary courts of justice.

Bracton to the same purpose, saith, that if the like case hath not happened before; and be obscure, and difficult to be adjudged; then the judgement shall be respited untill "the great court, (that is the parlement;) and there, by advice of the court, shall be determined^a."

Fleta, to the same purpose saith of the parlement. "That there are determined the doubts of judgements; and for new wrongs, new remedies be ordained: and every one hath justice, according to his merit^e."

Britton saith, in the person of the king: "We will that our court do judge, as the earles, and barons doe in time of parlement^f." And undoubtedly, to this day, the earles, and barons, (the house of lords,) determine causes adjourned thither by the judges, for difficulty; or brought thither by the parties, by appeale, or by a writ of error.

The 70 elders gathered by Moses, by the commaund of God, in the institution of the great sanhedrim; although before, while they were in Ægypt, and were elders there, yett they were then in place and office of councill only; butt not in the authority of judg-

^a L. 1. c. 2. n. 7. Usque ad magnam curiam; et ibi per concilium curiæ terminetur.

^e L. 2. c. 2. Ibi terminatæ sunt dubitationes judiciorum; et novis injuriis emerfis, nova constituuntur remedia; et unicuique justitia, prout meruit.

^f F. 41. Volons que nostre court soit judge; sicome counts, et barons, en temps de parlement.

ing, which now they did receive, and are made "gods^e," that is judges. And Schiccardus saith of the judicial power of the sanhedrim; that "they exercised great authority, as almost wholly possessing the cognizance of civill causes^b." Bertram gives the same verdict of the sanhedrim's power; that, "it seemes, they had cognifance of the greater judgementsⁱ." And Menochius agrees; "that the people did so acquiesce in their decrees, that there was no appeale to Moses^k." It was called, by their owne authors, "the greatest tribunall of the nation; and, the highest of ordinary courts of justice." And that "nothing at all, either of commaund or jurisdiction, was wanting to this most eminent consistory^l; and the elders therof were plainly, (saith our antiquary,) universall presbiters, or elders, indowed as well with the office of teaching, as of judging, all causes^m."

That the græcian publique councells had the judicial power, in them, appears by that counsell of Aristotle to the magistrates, and senators; advising their "judgements to be according to written rules, and according to lawesⁿ." Which way of judgement, both in publique councells, and in inferiour courts of justice, will be found more for the good both of magistrates, and people; than judgement "according to the consciences of good men^o," which are not every where to be found. And Solon is said to institute the

^e Grotius ad Num. xi. & in Math. v. 22. & in Luc. x. Paul. Fag. in Num. xi. 16. Præerant consilio tantum: non judicandi potestate, quam mox accipiunt, fiuntque אלהים.

^b Jus reg. Hebræor. c. 4. p. 91. Magnam potestatem exercebant; civilium quippe causarum cognitionem pene soli possidentes.

ⁱ Bertram. p. 63.

Videtur de gravioribus judiciis cognovisse.

^k L. 1. col. 3. Omnes ita eorum

decretis adquevissent, ut ad Moysen non revocarent.

^l Misna tit. Sanh. c. 1, 2.

Nihil omnino sive imperii, sive jurisdictionis, eminentissimo huic consistorio deerat.

^m De synedr. Seld. l. 2. p. 282. Plane erant universales presbiteri; seu munere tam docendi, quam judicandi, universum donati.

ⁿ Arist. polit. l. 4. p. 509.

& l. 2. p. 193.

^o Secundum arbitrium boni viri.

senate, in Athens, who “ had the power of judging of all crimes ^p.” I suppose he might mean the councill of the areopagitæ, who had this power ; and by some are held to have bin instituted, before the jewish sanhedrim ; yett perhappes might have some addition, or alteration, from Solon. Eusebius gives it the same time of institution, with the great sanhedrim. The wordes are : “ that about the same time, when the 70 judges of the Hebrewes were constituted ; then were also instituted, among the græcians, the judges areopagites ; who judged as well criminall, as civill causes ^q.” Jacobus Capellus is of the same judgement : “ about that time, (saith he,) in a place called the Pagus Martis, was constituted the sanhedrim of capitall causes ; the which from that place was called the councill, or tribunal, of the areopagites ^r.” And the great antiquity, and judiciall power, of this councill is also confirmed by a famous marble monument, belonging to the honourable house of Arundell. Butt I shall passe over these curiosities, though much more might be noted of them.

In Rome the judgement, and care of punishment of all crimes, as treasons, conspiracies, witchcrafts, homicides, &c. belonged to the senate ^s.

In the german diette, Grotius affirmes : that “ it was lawfull, in the councill, to accuse any one ; and that also in capitall causes ^t.” And if so ; they had the judiciall power in them. Ano-

^p Gothofred. l. 2. p. 699. ^q Euseb. in Chron. Sub idem tempus, quo hi septuaginta judices Hebræorum constituti sunt ; institutos esse apud Græcos, judices areopagitas, qui.——
^r De an. m. 2487. In pago Martis dicto constitutum est synedrium causarum capitalium ; quod, à loco, areopagitarum concilium, sive δικάστηριον, dictum est. ^s Dionys. l. 2. Polybius, l. 6. ^t De antiquit. reipubl. Batt. f. 13. Licuit apud concilium accusare quoque, et in discrimen capitis——

ther of their countrymen holdes, that "in causes which concerne the persons, honor, and inheritance of the princes and states of the empire; the emperor cannot give judgement without the princes of Germany as assistants to him." And if so; then this councill is the supream tribunall, for judiciall affayres^u.

If we search into the most antient counsell of the druydes, in Gaule; they are sayd "to doe right universally to the Gaules, who submitted to their judgements, as to decrees of senate^w."

We find, in our records, too great a number of judgements given in parlement, in cases of treason, and publique crimes: wherby many peers, and others, have lost their lives. The like is noted in the publique counsell of Gaule, in the time of the druydes, by the same author. "If there were any question of any great person, who had conspired against the publique liberty, or had aspired to turrany, in his commonwealth, by the sentence of the estates he suffered condemnation of death, banishment,"^x &c. as the councill did hold fitt to judge. Du Haillan concurre in this; that in the assembly of the estates were antiently determined the differences of the great princes: and chiefly of those, "who were accused of treasons, rebellions, and capitall crimes^y;" and the controversies between bishops, and abbots, &c. all of them judiciall affayres.

^u Millerus, c. 20. p. 205. Imperator, in causis quæ principum, ac ordinum imperii corpus, honorem, et feuda concernunt; non nisi cum principibus Germaniæ, tanquam assessoribus, judicare debeat.

^w Pasquier recherches, f. 7. Universellement aux Gaulois, les quels se serment à leurs sentences, comme aux arrests.

^x En quelles, (s'il estoit question de quelque grand personnage qui eust conspiré contre la liberté du public; ou aspiré à turranie de la republique;) par la sentence des estats il suffroit condemnation de mort, banissement, &c. ^y F. 180. Qui estoient accusez de trahisons, rebellions, et crimes de leze majesté.

In Mantua, they have the like judicial power in their publique councells, wherof Go:hofred thus relates; that “the duke hath his supream senate, or councill; which senate judgeth of all things in causes concerning justice; neither is there any appeale from them^z.” And this dernier resort, or last appeale, is incident to the nature of all supream publique councells; else they hardly deserve the name of supream, which carryes with it the last appeale, as necessarily belonging to it, and an essential power of it; and consequently, judicial affayres are part of the buisnes of those councells. So it is in those already noted; the like might be said of the supream councells of Spayne, Italy, and most kingdomes of Europe.

In Sweden an appeal lyes, from all inferiour judicatories, to the ricksdagh, which is the supream. And being judges, they cannot too often meditate upon that excellent councill given to Moses, by his father in lawe, for the choyce of judges; “that they must be able men, such as feare God, men of trueth, hating covetuousnes^a.” The vulgar latin, and the greeke say, “men of power^b.” The syriack saith, “men of courage.” Onkelos is “men of virtue;” with which the samaritan version agrees. The septuagint renders them “just men hating pride:” and the syriack saith, “hating a bribe, and deceit.” All the versions are good rules for magistrates, and counsellors, who are judges: so is the charge of king Jehoshaphat, to his judges. “Take heed what ye doe; for yee judge not for man, butt for the Lord, who is with you in the judgement. Lett the feare of the Lord be upon you; for there is no iniquity with the Lord our God, nor respect of persons, nor taking of guifts^c.”

^z P. 510.—Habet supremum suum senatum, sive concilium; qui senatus de omnibus rebus judicat, in causis concernentibus justitiam; nec datur ab eo provocatio.

^a Exod. xviii. 21.

^b Viros potentes, ἀνδρας δυνατους.

^c 2 Chron. xix. 6, 7.

C H A P. XCII

So that for defect.

THE electors in each countey, citty, and borough are those who give the power, and parlementary authority, to their deputies; and they are by this writ to give full, and sufficient power, for the dispatch of the great affayres to be treated on. There "must be no defect;" that is, their knights, cittizens and burgeses must want no power. According to which sence the word is used by Livy; "that in defect, or for want of victualls, we rendered ourselves unto the ennemy".

The affayres of parlement are of greatest consequence to be dispatched; and a defect of power wherby the dispatch of them may be hindred, or retarded, would be of mischievous consequence to the publique: therefore the writ commaunds, that "there be no defect."

I shall not heeruppon discourse of that power in the electors, to give more, or lesse, authority and power to their deputies, as the electors please: nor, of that point, whether the authority being given by them, it be not in their power to recall the same againe, when they thinke fitt; in case the actings of their deputyes be judged, by them, to be contrary to their good. Such questions as

* Lib. 4. Ut defectu ciborum dedimus nos hostibus.

these, and of the power in the people, are never stirred without some daunger, and trouble, likely to arise thereby. It is no where to be found, that these questions have bin determined; or, such powers executed, by the electors; only, by their indenture, to give full authority to their deputies: who have bin also so carefull, not to give distast to their electors; that they have answered, upon new affayres to them propounded^b, that "they were ready to aid the king's estate; only, in a new devise, they durst not agree without further conference with their countrey, from whom they received their authority; and, desired to know their pleasure, in the perticular execution of it."

^b 13 E. 3. rot. parl. n. 9.

C H A P. XCIII

Of such power.

THE “parlementary power” is vast, and generall: but the “power of each state” is exactly described by the late king in his declaration, and answear to the 19 propositions, which is worthy the recitall; and then to come to the “power of all the states together^a.”

The king’s words are these. “There being three kindes of government amongst men, absolute monarchy, aristocracy, and democracy; and all these having their perticular conveniencies, and inconveniencies: the experience and wisdom of your auncestors hath so moulded this, out of a mixture of these; as to give to this kingdom, (as farre as humane prudence can provide,) the conveniencies of all three, without the inconveniencies of any one; as long as the balance hangs even between the three estates; and they runne joyntly on, in their proper channell, (begetting verdure, and fertility, in the meadows on both sides;) and the overflowing of either, on either side, rayse no deluge, or inundation. The ill of absolute monarchy is tyranny; the ill of aristocracy is faction, and division; the ills of democracy are tumults, violence, and licentiousnesse. The good of monarchy is the uniting of a nation under one head, to resist invasion from abroad, and insurrection att home. The good of aristocracy is

^a Collection of remonstrances, declarations, &c. p. 320.

the conjunction of counsell, in the ablest persons of a state, for the publique benefit. The good of democracy is liberty: and the courage, and industry, which liberty begets.

“ In this kingdome, the laws are jointly made by a king; by a house of peers; and by a house of commons chosen by the people; all having free votes, and perticular priviledges. The government according to these lawes is trusted to the king; power of treaties, of warre and peace, of making peers, of choosing officers, and counsellors for state, judges for law, commaunders for forts and castles, giving commissions for rayfing men to make warre abroad, or to prevent, or provide against, invasions or insurrections att home, benefit of confiscations, power of pardoning, and some more of the like kinde are placed in the king: and this kind of regulated monarchy, having this power to preserve that authority, (without which it would be disabled to preserve the lawes in their force, and the subjects in their liberties, and properties,) is intended to draw to him such a respect, and relation, from the great ones, as may hinder the illls of division, and faction; and, such a feare and reverence from the people, as may hinder tumults, violence, and licentiousnesse.”

Againe; “ that the prince may not make use of this high, and perpetuall power to the hurt of those for whose good he hath it; and make use of the name of publique necessity, for the gaine of his private favourites, and followers, to the detriment of his people: the house of commons, (an excellent conserver of liberty butt never intended for any share in government, or the choosing of them that should governe;) is solely intrusted with the first propositions, concerning the levyes of monies, (which is the sinnews as well of peace as warre;) and, the impeaching of those who, for their own ends, though countenanced by any surreptitiously gotten
2
command

commaund of the king, have violated that law which he is bound, (when he knows it,) to protect; and to the protection of which, they were bound to advise him; att least, not to serve him in the contrary. And the lords, being trusted with a judicatorie power, are an excellent screen, and bank, between the prince, and people, to assist each against any incroachments of the other; and by just judgements to preserve that law, which ought to be, the rule of every one of the three. The power legally placed in both houses is more than sufficient to prevent, and restraine, the power of tyranny. And the excellent constitution of this kingdome hath made this nation, so many years, both famous, and happy; to a great degree of envy."

Whilest each state doe keepe themselves within their true bounds; the publique affayres proceede prosperously; and the ship of the commonwealth, sayling in a knowne course, by the blessing of God and direction of the great pilote, arrives in a safe harbour. Butt when she goes out of her course; when the limits of law, and knowne power, are exceeded: Polybius, of the Athenians, observes, "that every man is of an humor by himselfe; some desirous to faile on, others labouring to putt into harbour; some strike the sailes, others cast oares into the water; one part drawing this way, the other to another kind of course; wheron immediate daunger insueth; and in hope to gaine land, they runne upon a rocke, and so the ship is split^b." Too sad experience makes us sensible of the trueth of Polybius his opinion; and of what his majesty saith, a little after the place before noted, in his answer to the parlement's propositions: "that all great changes are extreemly inconvenient; and almost infallibly beget yett greater changes, which beget yett greater inconveniencies; and indeed seldome returne to the old channell, before a miserable overturning."

^b Polybius, l. 6.

It will not, I suppose, be expected, that I describe the power of parlement; it is too vast for a perticular recitall of it. Our bookes say, "it may doe all things:" and doubtles it is the supreme power of this nation; and can bind the persons, estates, and liberties of all the people. It orders sea affayres, and land affayres; forein, and domestique. And although each state hath its bounds, by law: yett all the three estates together, the king, lords, and commons, have noe bounds; butt, power to doe what they please.

The buisnes of the seas is, by our law, left to the speciall care of the king; as a great, and honorable, part of his dominion: which is fully vindicated, by that excellent worke of Mare clausum^c; and hath bin both challenged, as a right of this crowne, both by our kings and parlements; and acknowledged, by our neighbour states. John king of Sweden, in his letter to queen Elizabeth, desiring leave for Olaus Wormius, a Swede, to carry merchandize into Spayne, saith; that "of necessity he must passe through the sea dominions of the queen^d." And this kind of passage hath bin usually denied to foreiners; for in many of those passeports that have been graunted to the marchants of neighbour nations, by E. 1. during the warre between him and the French, this clause is usually added: "uppon condition, that they neither convey, nor cause any thing to be conveyed, to the French; nor communicate any thing at all to our enemies there, in any manner^e." The same king's instructions are: "that his soveraignty by sea be preserved, with extraordinary care and diligence; as belonging to him by antient right, as arbitrer and moderator of the lawes, and customes, and persons, of such as passe therin^f."

^c L. 2. Seld. mare claus. c. 15. 21.

^d In Bibliothec. Cotton. an. 1587.

—Maritimas reginæ ditiones pertransire.

^e 24 E. 1. rot. parl. m. 5.

25 E. 1. pars 1. m. 2. 7. 16, &c.

^f Fascic. de superioritate maris Angliæ,

in arce London.

King John, by his commission, in imperiall termes requires: "that all kind of ships whatsoever, which could be found throughout the English sea, should be stayed; and brought neere his shores." The like commission was in E. 3. time, intituled "for the arresting of shippes;" and in H. 5. and other times: by which the dominion of the kings of England, in these seas, appeareth^s.

The great recognition of this superiority, and dominion, of the sea to be in England, is by that record in the tower, in a bundle of parchements conteining some matters relating to the times of H. 3. E. 1. and E. 3. in which are three originals, or coppies of a libell, thus intituled. "To you the lords auditors deputed by the kings of England, and France, to redresse the wrongs done to the people of their kingdomes, and of other territories, subject to their dominion by sea, and by land, in time of peace and truce^h, the procurators of the prelats, nobles, and of the admirall of the sea of England, &c. as also of divers other nations inhabitants of the sea coasts of Genoa, Catalonia, Spayne, Almaine, Zeland, Holland, Friezland, Denmarke, and Norway, and of divers other places of the empire, doe declare: that wheras the kings of England, by right of the said kingdome, from time to time wherof there is no memoriall to the contrary, have bin in peaceable possession of the soveraigne lordship of the sea of England, with power of making and establishing lawes, statutes, and prohibitions of armes and of ships, &c.; they complaine, that monsieur Reyner Grimbald, master of the navy of the king of France, (who calles himselfe admirall,) doth wrongfully assume, and exercise, the office of admirall in the said sea of England, and hath wrongfully taken the goods of severall persons att sea," &c.

^s 9 Johannis rot. parl. m. 1. n. 3.—De navibus arrestandis. 3 H. 5. rot. parl. pars 1. n. 6. Sea, &c.

^h A vous seigneurs, auditours, deputez, &c.

By this record all these nations, by their commissioners, doe acknowledge the superiority, and dominion of England, in the sea. And no nation can shew a greater recognition, and by so many princes and countryes, of the right, and dominion at sea, pertaining to the crowne of England; to which the nations before mentioned doe, by their procurators, all of them agree, and subscribe unto it.

The like dominion is challenged in the scottish sea; as appears by the "proclamation of king James, of Great Brittain, prohibiting all foreiners to fish in the scottish seas, without leave¹;" and, the "commission of association of England, and Scotland, under king Charles I. for setting up the trade of fishing," wherein I had the honor to be consulted with by the great attorney Noy.

Butt, to go higher; by some acts of the Scottish parlement, not so much new as revived, it is ordained. "That all manner of fischeres that occupys the sea, and utheres persons quhat sum ever that happenis to slay hering, or quihte fish, upon the coast, or within the isles, or out; with the samen within the frithes; bring them, to free ports, &c. where they may be sold to the inhabitants of the same kingdome; quarby his majestye's customes be not defrauded; and his hienes lieges not frustrate of the commoditie appointed to them be God: under the pain of confiscation, and tynfell of the veschelles, of them that cumes in the contrary herof; and, of escheiting of all their moveable guddes, to our soveraigne lord's use^k."

A scottish lawyer, speaking of fishing in the easterne sea of Scotland, saith; "that after a bloudy quarrell betweene the Scots,

¹ Proclam. 6 Martii. 7 Jac.
c. 86.

^k Parl. 4 Jac. 6. c. 60, &c. & parl. 6 Jac. 6.

and Hollanders, about occasions belonging to the sea, the matter was composed in this manner: that in time to come, the Hollanders should keepe att least 80 miles distance from the coasts of Scotland. And if, by accident, they were driven neere; they paid a certain tribute att the port of Aberdeene, before their return: and this was payd, in the memory of our fathers; untill it came to nothing, partly by the negligence of governors, and partly through the boldnes of the Hollanders¹."

The seas further north were, heertofore, in subjection to the Danes, and Norwegians: butt afterwards, by agreement, it was annexed to Scotland againe, in the time of Ja. 3. who married the king of Denmarke's daughter; and had, with her, the isles of Orcades, and Shethland. And since that, the kings of Scotland have imposed, by their acts of parlement, tributes, or customes uppon fishermen, for fishing there^m:

This northerne sea is of a large extent, washing the coasts of Friezland, Island, and other islands belonged to the crowns of Denmarke and Norway. And this sea is also by some [acknowledged] as part of the dominion of the king of Great Brittain. Albericus Gentilis applying that of Tacitus, in the life of Agricola; that "the northerne coasts of Brittain, having no land lying against it, are washed by the maine, and open sea:" wheruppon, (saith Gentilis,) "you see how farre the dominion of the king of Great Brittain extends it selfe, towards the south, north, and westⁿ."

The like is acknowledged in a letter from the bishop of Holar, in Island; to the pastor of Harwich, in England: whose words are.

¹ Guliel. Welwodus de dominio maris. c. 3. —^m Johannes Ferrer, de Piedemont. —ⁿ In advocat. Hispan. l. 1. c. 8. Nullis contrà terris, vasto atque aperto mari pulsatur. — Vides quam protendatur regis Magnæ Britanniæ imperium.

There is a report att this day, that you of Brittain, “whom I had almost called lords of the sea,” have negotiations every yeare in Greenland°.

It is true, that the kings of Norway challenged the dominion of those seas by Island; as appears by those, (amongst many other,) rare collections in MS. bookes, which my noble friend Sir Thomas Cotton furnished me withall. And heerwith agrees the statute of H. 6. which “prohibits to visite Island, Finmarck, and Halghæland; in favor of the king of Norway.” Butt there are divers letters, wherby the king licenseth his subjects to goe to those places; and att length that statute of 8 H. 6. was repealed: and Major saith, “that a fleet of English went every yeare to Island, beyond the arcticke circle, to catch fish^p,” as they have done constantly to this day. And in the league between our king H. 7. and king John 2. of Denmarke it is agreed; “that Englishmen, &c. may sayle to the isle Tyle, and fish there.” Tyle the old name of Island, and whence some suppose it to have been Thule.

Hugh Grotius, uppon king James his inauguration, telles the world:

“Though all great things a fall doe feare;
Yett James his power must stand:
Being enlarged; and compos’d
Both of the sea, and land^q.”

° Hackluyt’s voyages, tom. 1. p. 590. Quos ego propè maris dominos appella-
verim.

^p In Bibliotheca Cottonianâ, MS. of treaties between England and Denmarke. Fœder. 3 H. 5. & temp. H. 6. & H. 7.—8 H. 6. c. 2. & rot. parl. n. 35.—18 H. 6. rot. Franciæ. m. 16. 12 H. 7. & 1 H. 5. rot. Franciæ.—Stat. H. 8. c. 1. Major, de gestis Scotor. l. 1. (p. 22. edit. 1740. M.)

^q ———Licet omnia casus

Magna suos metuunt, Jacobo promissa potestas

Cum terris, pelagoque, manet, &c.

He proceedes in his straine to the king :

“ This bound unbounded is. Great Brittain stands
Confined, by the shores of other lands :
And all that may by winds, and sayles, be knowne,
Is an accession of so great a crowne’.”

It is no smalle prooffe of this soveraigntie ; that, by our parlements, customes have bin imposed on ships of marchants, and of fishermen, passing these seas. As in R. 2. time an imposition was layd, by the parlement, upon every ship that passed through the northerne admiraltie^r ; that is, in the sea from the Thames mouth, towards the north east : as well marchants, as fishermen ; foreiners, as English. The title of the record is thus. “ This is the ordinance, and graunt, by the advice of the marchants of London, and other marchants towards the north ; by the assent of all the commons of the parlement’.” It is said to be “ before the earle of Northumberland, and the major of London.” And the end therof is sayd to be, “ for the guard, and defence of the sea, and the coasts of the admiraltie of the north.” And the force, with which the officers were impowered, was two ships, two barges, and two ballingers fitted for warre. And they were “ to take of every fishing vessell, for each weeke, of every tunne 6 d ;” of every ship fishing for other fish than herring, for 3 weekes, of every ton 8 d : and officers were appointed to compell this payment^w.

^r Finis hic est qui fine caret. Quæ meta Britannis,
Littora sunt aliis : regnique accessio tanti est,
Quod ventis velisque patet.

^s 5 R. 2. rot. parl. pars 2. art. 38. in schedul. ^t C’est l’ordinanee, et
graunte, par l’advise des marchands de Londres, et des autres marchands vers la north ;
par l’assent de touz les communs de parlement. ^u Par devant le count de
Northumberland, et le major de Londres. ^w Pour la guard, et tuition,
du mer, et costeres, de l’admiraulté de north.—Item de prendre, de chescun vesseau
peffoner que peffent, &c. en un semaign, de chescun tonneight. vid.

Sometimes our kings gave licence to fish in these seas, as H. 6. to the French, and to other foreiners, for a yeare^x; and sometimes, for 6 moneths: and a fize, or proportion, was præscribed for their fishing boates, or buffes; not to be above 30 tons. In later times, leave was asked of our admirall, for Frenchmen to fish for soles in the neighbouring seas, for their king's owne table; and this was frequent in their king, H. 4. time; as hath bin affirmed by such as have bin judges of our admiraltie, and commaunders att sea; and that the ships of those French were seized, as trespassors upon the sea, who presumed to fish there without such kind of licence.

In the easterne sea, on the coast of Yorkshire and thereabouts, it hath bin an antient custome for the Hollanders, and Zealanders, to obtaine leave to fish, by petition to the governor of Scarborough castle: and this, for many years past, is affirmed by Cambden, in his Brittainia; and that the Englishmen have ever given them leave to fish, reserving alwayes the honor, and priviledge. And it is, (saith he,) almost incredible, what a vast sum of money they make by this fishing; when our owne countrey men are negligent therin. The same is attested by Hitchcocke, and other writers; and many of our records which testify their asking leave, att Scarborough castle, to fish in those seas^y.

And, as leave hath bin graunted: so, some times, fishing hath bin prohibited in these seas. This appears by the letter of E. 3. concerning the lawes of fishing, directed to his governors of severall townes upon the easterne shore, reciting: that he had "given licence to fishermen to fish with ships, and boates, under 30 tons

^x 38 H. 6. rot. Franciæ. m. 9. et 14.
edit. Lond. 1580. Gerard. Malinius, in lege mercator. c. 35.

^y Hitchcock's New year's gift,

burden; any prohibition, or commaunds of ours whatsoever to the contrary notwithstanding^a.”

King James, by his proclamation, gives notice to all the world. “Our expresse pleasure is; that from the beginning of August next, no person, of what nation or quality soever, being not our naturall borne subject, be permitted to fish uppon any of our coasts, or seas, of Great Brittain, Ireland, and the rest of the isles adjacent; till they have demaunded and obtained licence of us or our commisioners: uppon paine of such chastisement, as shall be fitt to be inflicted on such willfull offenders^a.”

King Charles I, by his proclamation, recites that of his father; and, that the inconveniencies which occasioned it were increased; and saith. “Wee being sencible of the premiffes; and well knowing how farre we are obliged, in honor, to maintaine the rights of our crowne, especially of so great consequence; have thought it necessary, by the advice of our privy councell, to renew the restraint of fishing, without licence^b.”

The long parlement, when they were in hostility with the Dutch, sent a prohibition, with a good fleet of ships, to maintaine the right of prohibiting fishing; and destroyed, and scattered, and tooke many of their fishing ships, and buffes; and in the treaty of peace with them, insisted uppon that right of dominion in these seas.

Sometimes, protection hath bin given by proclamation, or by a fleet, to strangers fishermen; qualifications being added according to the pleasure of the king, and parlement: as by the record of E. 1.

^a 11 E. 3. rot. claus. m. 35.

^a Proclamat. 6 Maii. 7 Jac.

^b Proclamat. 10 Maii. 12 Car. 1.

intituled, "for the men of Holland, Zealand, and Friezland, to have leave to fish neere Jernemuth^c."

"The king, to his beloved and trustie John de Buteturte, warden of his porte of Jernemuth, greeting. Forasmuch as we are certefied, that many men out of the parts of Holland, Zealand, and Freezland also, who are in amitie with us, intend now to come, and fish, in our sea neere Jernemuth: we commaund you, that you cause publique proclamation to be made, once or twice every weeke; that no person whatsoever, imployed abroad in our service, presume to cause any injury, trouble, damage, hinderance or grievance to be done to them; but, to give them assistance," &c.

E. 3. by the record before cited, commaunds the governors of Yarmouth, and other sea townes; to permit the fishermen to fish, with boates under 30 tuns.

Our king E. 4. invested three persons, with navall power, whom the record calles guardians, conductors, and waftors^d; whose office was to protect, and guard, the fishermen uppon the coasts of Norfolk and Suffolke. And that the expences of the guard might be defrayed by the fishermen; and all others be excluded from the protection; he appointed fower overseers who were to give notice to all fishermen, of what countrey soever they be, who shall desire to fish in the parts aforesayd, that they contribute so much for every tunne, &c. The like protections, for fishermen strangers, are in divers of our records: and they were to contribute, for the expences thereof; though they had letters of safe conduct, or security and protection, from any other princes^e.

^c 23 E. 1. rot. pat. m. 5. pro hominibus Hollandiæ, &c.
pat. m. 2. custodes, conductores, waftores.

^d 22 E. 4. rot.

^e 3 H. 7. rot. pat. pars 2.
dorso 15 Aug. & pt. 1. dorso 18 Sept. & 2 R. 3. pt. 1. m. 2.

In the latter end of the proclamation of king Charles 1. before cited, is a clause, thus. Our resolution is to keepe such a competent strength of shipping uppon our seas, as may hinder incroachments; and assist, and protect, our good friends and allies, who shall, by virtue of our licences, endeavour to take the benefit of fishing uppon our coasts and seas ^f.

Another prooffe of the soveraignty of the seas to be in the king, and parlement, and within their power, is the severall leagues, and treatyes between our kings, and other princes and states, touching fishing; which sometimes was restrained to certaine limits, relating both to time, and place; so that by agreement, the foreiner in amitie might not fish, beyond these limits: the dominion over the whole adjoyning sea, being reserved to England^g. Thus by the league between our king H. 4. and the king of France, it was agreed^h: that the subjects of both might freely use fishing throughout that part of the sea, which is bounded on this side by the ports of Scarborough and Southampton; and on the other side, by the coast of Flanders, and the mouth of the river Seine. The time was limited between autumnne, and January: and these limits were set by our king at his pleasure, as lord and soveraigne of the sea; and sometimes by the parlement, who have also power of those sea affayres. And our king wrote his letters to his sea commaunders, that the French might securely enjoy the benefit of this agreement.

Notwithstanding the proclamation of king James before mentioned; the Netherlanders incroaching still uppon the right of this kingdome, pretending, bicause of the long connivence of king James and queen Elizabeth, that they had a right of their owne by

^f Proclamat. Car. 1. an. 12.

^g Mare claus. Seld. l. 2. c. 21.

^h 5 H. 4. rot. Franciæ. 29 Sept.

immemoriall possession; the which termes their commissioners heere used to the king: att length, after many artificiall delayes, shifts, and dilatory addressees, they made a verball acknowledgement of the king's right; att the same time, designing to invade it, more than formerly.

In a letter from secretary Nanton, to the lord ambassadour Carleton, in Holland¹; he acquaints him with his majesty's pleasure: that "the Netherlanders should send commissioners hither to determine, among other things, the king's right for the sole fishing, uppon all the coasts of his three kingdomes." The same letter giveth direction to the ambassadour Carleton, to tell the states from the king: "that the kings of Spayne have sought leave to fish there, by treaty from this crowne; and that the king of France, (a neerer neighbour to our coasts than they,) to this day requests leave for a few vessels to fish for provision of his owne household. And that it appears so much the more strange to his majesty, that they, being a state of so late date, should be the first that would presume to question his majesty's antient right, so many hundred years inviolably possesse by his progenitors; and acknowledged by all other antient states, and princes. That they, by their letters, seemed to confirme their immemoriall possession, (as they terme it,) with divers treaties; one in 1550; another betweene his majesty's predecessors, and Charles 5; and, not by the law of nations. That his majesty being an islander prince, is not ignorant of the rights of his owne kingdomes: nor doth expect to be taught the lawes of nations by them, nor their Grotius; whose honesty called in question, by themselves, might render his learning as much suspected to them, as his person."

¹ Letters dat. 21 Dec. an. 1618.

In a letter from the lord ambassadour Carleton, to secretary Nanton, he saith: "that some of the states acknowledged, that their commissioners went beyond their limits, in their termes of immemoriall possession, and immutable droict de gens; for which they had no order^k."

By a letter from secretary Cooke to Sir William Boswell, the king's resident att the Hague, he acquaints him; "that the Netherlanders sued for licence to fish uppon our coasts, and obtained it under the great seale of Scotland: which, (saith he) they now suppress."

During our navall warre, with them; they sent hither commissioners, to treat with the long parlement for a peace. In which treaty I, being a commissioner for the parlement, insisted among other things uppon this right of the dominion of the seas. Wherat the Dutch were much offended, and would not with patience debate it; and had nothing, butt a denyall, to confute the arguments against them: and nothing came of that treaty.

Touching the dominion of the seas claymed by other nations, in their respective precincts, and the right therof; and of the great question, whether the sea be liberum, or clausum: nothing can almost be noted butt what is already fully, and learnedly, sett downe in the tracts of Selden and Grotius; wherein, he that desires further satisfaction on this argument, may plentifully find it.

Nor shall I heere describe the other powers of parlements, and other publique councells; least I too much weary the reader, and my selfe: they have bin before in parte noted, in the 15 chapter, and in other places.

^k Letter dated 14 January, 1618.

C H A P. XCIV

Or for improvident choice.

OF the choice of members of parlement, fomewhat hath bin before noted; and, the severall acts of parlement relating therunto^a. They are to be chosen by the common consent of every countey: and generally, the elections, both in counteys and townes, are by the acclamation, and voice, of the people. And if it cannot well be judged for whom the voice is, or if the pole be demanded; that is, to number by the pole all the electors; it ought not to be denied. In some places the manner, of giving their suffrages, is by holding up their hands. Philo, speaking of the judges among the Jewes, mentions those who had the power of judging either by lot, or suffrage, and by holding up of their hands^b.

The Græcians (as hath bin noted) had the same manner of choice by holding up of hands. And the Hebrewes made their elections sometimes by lot, and sometimes by suffrage: and so, (saith our author,) I thinke were their presbiters, or elders, chosen. So it is said of the Athenians, that their magistrates were chosen three manner of wayes; either by lott, or by little stones, or by suffrage of the people; and sometimes, by prærogative of dignity^c. When

^a 50 E. 3. rot. parl. n. 177.

χειροποινηθέντας δικάζειν.

^b Lib. περὶ δικασῶ. Τῆς λακούντας, ἢ

^c Menochius, l. 1. col. 51.—Seld. de syn. l. 2.

c. 6. § 3. Tam sorte, quam suffragiis, interdum opinor cooptati sunt presbiteri. Gothofred. l. 1. p. 699.

the apostles and disciples were to choose an apostle, in the place of Judas; they gave forth their lotts, and the lott fell on Matthias^d. Which way is not in use in our publique elections, in England: butt all the elections, in Venice, are in a kind of way of lottery, by the balleting boxe.

All elections ought to be peaceable: in so great multitudes meeting together, there is daunger of tumults; therefore our parlements made an order against comming armed to an election^e. And all places are carefull to avoyd breach of the peace, in their elections.

^d Acts i. 26.

^e 18 H. 6. rot. parl. n. 17.

C H A P. XCV

Of the said knights.

I Have formerly noted somewhat touching this order, and dignity, of our knights; which is an universall order throughout the world. And a knight being an Englishman, although made a knight by any forein prince, is yett a knight in England, and capable to be chosen a knight of the shire where he shall be resident. That a forein knight is a knight in England appears by our booke case 20 E. 4. where, in a writ of debt brought by Sir John Douglas knight, the defendant demaunded judgement of the writ; "for that the plaintife was an earle of Scotland; butt not, of England".

Judge Littleton gives the rule. That the plaintife is an earle in Scotland, butt not in England. And if our king graunt to a duke of France a safe conduct to marchandise, and to enter into his realme; if the duke commeth, and bringeth marchandise into this land, and is to sue an action heere: he ought not to name himselfe duke; for he is not a duke in this land, butt only in France. Out of which case three things are collected. 1. That the plaintife was named by the name of knight, wheresoever he received that degree of dignity. 2. That an earle of another kingdome is no earle heere. 3. That the king's naming one a duke, in letters of

^a 20 E. 4. f. 6.

safe conduct, doth not inable him to sue as a duke heere^b. With this, as to the degree of knight to be generall, seemes to agree another booke case, in H. 7. time^c. And all of these forein dignities are capable of being chosen knights of shires, notwithstanding their forein titles; and a forein knight ought to be returned by the title of [knight.] But forein earles, barons, &c. have those titles by courtesy given to them: butt in legall proceedings, (except knights,) they are stiled esquires only.

Esquires are also capable of being chosen knights of shires; wherof we have dayly experience. They were so inabled by the statute of H. 6.^d: as are also notable gentlemen of the countyes. This title of esquire was antiently given to those who attended on knights and lords in the warres; and were as “candidates of the military order^e,” in elder times called *servientes*, and *armigeri*, as att this day. So it is said “the armigeri of the earles of Hereford, and of Kent, in W. 1. time, committed great outrages^f.” Math. Paris reckons knights, batchelers, and *servientes*, in the army^g: and in our year bookes, the name of serjeant is used for the next to knight; as where knights could not be found to make up the grand assize, they were directed “to choose the most able serjeants^h”; and they did so. The like is in the answer to the commons petition, against lawyers being knights of the shireⁱ: the king willeth, that knights, and serjeants, (that is esquires,) of the best ranke in the countey, be returned to be knights of the shire.

Under R. 2. we find the name of “esquire” expressely given as a created, and honorary, title by patent^k.

^b Calvin's case, Co. 7. rep. f. 16.

^c 7 H. 6. 14.

^d 23 H. 6. c. 15.

^e *Militaris ordinis candidati*.

^f Ordericus Vitalis, hist. eccles. l. 4. p. 507.

^g P. 312.

^h 22 E. 3. 18. 26 E. 3. 57.—D'eslier les meulx valiaunts

serjeants.

ⁱ 46 E. 3. rot. parl. n. 13.

^k 13 R. 2. rot. pat.

pars 1. m. 37.

Judge Thirning relates, that a lord, att the font, knighted his son, saying; be a good knight, for you shall never be a good esquire¹: as if the knighting not only prevented his being an esquire, (the greater title drowning the less;) butt also, that he was no esquire before knighting of him. Yett by Chaucer, the son of a knight is an esquire; where he saith, in the description of him after a knight:

“ With him there was his son a young squire,
A lover, and a lusty bachilere.
Curteis he was, lowly, and serviceable,
And kerft, before his father, att the table.”

The attendance of esquires uppon knights, and lords, appears by many antient testimonies: and att this day, the attendance of esquires, uppon knights of the Bathe, addes some authority^m.

Esquires were also antiently made by giving collars of SS to them; as in that old pamphlet of the tanner of Tamworth, and king E. 4.

“ A collar, a collar, the king gan cry.
Quoth the tanner, it will breed sorrow;
For, after a collar, commeth a halter:
I trow, I shall be hang’d to morrow.
Be not afrayd, tanner, said our king;
I tell thee, so mought I thee;
Loe heere I make the best esquire:
That is in the north countrie.

Att this day, the eldest son of every knight is by law an esquire; and the younger sons of earles, and barons, do not disdaine that title; and divers, by office, are so; and the king hath esquires of his body.

¹ 7 H. 4. f. 8. ^m Rot. cur. Wakefield, in com. Ebor. Reg. cur. arch-ep. Cant. 42 E. 3. 13 H. 4. Entry congeable 57, &c.

Like unto whom were David, armiger to Saul; and 10 young men, armigeri to Joab; which are before noted. And they are somewhat proportionable to those "ministers," or esquires, that, together with the third horseman on whome they attended, made the trimarcisia among the Gaulesⁿ.

"A gentleman" is also capable to be elected a knight of a shire: and that title denotes one that either from the bloud of his aunces-tors, or the favour of his soveraigne, or from his own virtue, im-ployment or otherwise, according to the lawes and customes of honor in his countrey, is inobled, made "gentile;" or so rayfed to an eminency, above the multitude, perpetually inherent in his person^o.

The Hebrewes had the same distinction of "persons well borne, and persons of meane birth;" as is before noted. And so had the Græcians from them, and the Romans from the Græcians. The pe-digree heerof, and of the word "gentleman" from gentilis, and the origination of the word "gentile," is exactly sett downe by our learned author.

In Germany they have "free gentlemen," immediately subject to the emperor, and to his court; and free from taxes^p.

In Sweden the free gentlemen have the like priviledges with the barons; and are, as our lesser barons in England were, before king John's time.

In England we have some precedents, (as in Sweden, and the empire,) of creating a gentleman by patent^q.

Every esquire, and gentleman, if he be qualified by estate, and residence; is also capable, (as well as a reall knight,) to be chosen a knight of the shire, for the parlement.

ⁿ Οἰκέται. Pausanias de Phocicis, lib. 10.

^o Tit. hon. Seld. l. 2. p. 852.

^p Pourmeist. l. de juridict. c. 10.

^q Rot. tractat. amicit. temp. Jac. in canc.

C H A P. XCVI

Cittizens and burgesſes.

THESE are to have the ſame power, with the knights; and the knights, the ſame power with theſe, when they are mett in parlement. They are not “cittizens, and burgesſes,” only for the places for which they ſerve: butt they are then members of parlement ſerving for every countey, citty and borough in England, for the whole kingdome; and are obliged, by the duety of parlement men, to take equall care of the good, and ſafety, of every other countey, citty, and borough of England, as they are to take of thoſe which perticularly choſe them. So that now they are become “knights, cittizens, and burgesſes of England.” And a defect of power in them, or an improvident choyce of them, may hinder the buiſnes of the whole kingdome, wherwith every one of them is intruſted.

If any of the acts of parlement before noted, which doe præſcribe the manner of the election, be not obſerved; the choyce is improvident, and in a ſort, a voyd election; and conſequently, a defect of power in the perſons choſen.

It is no ſmalle priviledge of the commons of England, that every cittizen, and burgeſſe hath, in a manner depending upon him, the buiſnes of parlement; and a want of power in theſe cittizens, and

burgeſſes, hinders the generall buiſnes of the kingdome: butt by power veſted in them, the publique affayres proceed unto effect; which cannot be without them.

Att this day, each citty ſendeth two citizens to parlement; and all the antient boroughs, two burgeſſes: butt ſome late erected boroughs ſend butt one burges to the parlement, as Abingdon, and Banbury, and others. Butt in E. 3. time, there were ſummoned to parlement, by the writ, two knights to be choſen, and ſent, out of every countey; and, butt one burgeſſe out of every borough. Yett, for that one, there muſt be no defect of power, or improvident election.

26 E. 3. rot. claus. m. 14. dors.

C H A P. XCVII

The said affayres.

THE former notes, touching “affayres of parlement,” have comprehended consultative affayres, and judiciall affayres: there resteth for this place, some consideration of the “legislative affayres” of parlement.

That which hath bin before noted, touching the consultative power of parlement, suites also with the legislative affayres; the perticulars wherof can neither be restrained, nor recited. As in a statute of R. 2. one article was, that no person should attempt to revoke any ordinance then made. This was repealed; bicause such a restraint is against the jurisdiction and power of the parlement, the liberty of the subject, and unreasonable in it selfe^a.

To recite perticulars of this power were too vast a worke: some few instances may serve to confirme the generall. And whoso reads our records, and our statutes, in the Saxons times, and since, may find sufficient instances of the legislative affayres of parlement. We may goe as high as the druydes, of whom Cæsar mentions the exercise of the legislative power. And the choice of Cassivelan, for commander in chiefe in that time, by common councell, confirms it.

^a 11 R. 2. stat. c. 5. 21 R. 2. rot. parl. n. 20. 1 H. 4. c. 3. 1 H. 4. rot. parl. n. 144.

The legislative affayres, in the publique councells of the Saxons, appeare in their lawes yett extant with us, in the character, and idiome of that time^b. And part of the power of their thanes or barons, in their Witenagemotes, is alleadged to be in an assent to new lawes. One wherof is cited of great consequence, in the time of their king Egbert; who, (saith the record,) “in his parlement att Winchester did change the name of the kingdome, by the consent of his people; and commaunded it from thenceforth to be called England^c.”

In E. 1. time the kingdome was transferred, and settled, by act of parlement. The like unto which was also done by Philip, king of Spayne^d.

Our king E. 3. resumed, by act of parlement, the stile of Fraunce; and made two new seales^e.

Polydore, speaking of the parlement of H. 1. noteth: that “if any thing were done or decreed, by commaund of the king, or of the people; all was reckoned for nothing, unlesse it were confirmed by authority of this councell^f.”

Bracton accordingly affirmes; that “the lawes cannot be changed, or abrogated, butt by consent, and counsell, of all those by whose counsell, and consent, they were made and devised^g.”

In the charter of E. 1. of the liberties, is a saving to the king of his power to repeale, or amend the lawes; “by the assent of our

^b 2 Tit. hon. Seld. f. 632.

^c Instrument. hospital. Sti. Leonard. Eboracens.

Seld. tit. hon. f. 30. In parlamento, apud Wintoniam, mutavit nomen regni, de consensu populi sui; et jussit illud de cætero vocari Angliam.

^d Cambden. hist.

f. 7.—Thuanus, l. 23. f. 483.

^e 43 E. 3. rot. claus. m. 17. dorso.

^f Polyd. Virgil. hist. f. 477.

^g Bracton. l. 1. c. 2.

earles, barons, and others of our councell." And in this king's time, the prince of Wales was declared, by act of parlement, a rebell; for not having done his homage^h.

The statute of E. 3. shortly saith; that "the subject of a parlement is for the maintenance of statutes; and redresse of divers mischiefes, and grievancesⁱ."

Sir Thomas Smith is more large, where he saith: that "the parlement abrogateth old lawes, maketh new; giveth order for things past, and for things to be followed heerafter; changeth right and possession of private men; legitimateth bastards; establissheth formes of religion; altereth weights, and measures; giveth force of succession to the crowne; appointeth subsidies, tailes, and impositions, and taxes; giveth most free pardons, and absolutions; restoreth in bloud and name. And whatsoever the people of Rome might doe, either in centuriatis, comitiis, or tribunitiis; the same may be done by the parlement of England, which representeth, and hath the power of, the whole realme, both head and body^k."

Coke describeth the power to be so transcendent, that it "maketh, inlargeth, diminisheth, abrogateth, repealeth, and reviveth, lawes, statutes, acts, and ordinances concerning all matters. It is high and sacred, in making, confirming, repealing, and interpreting of lawes; in restoring persons attainted; in determining difficulties; and in all things which may tend to the safety of the commonwealth, or of any private person^l." And he summes up the authoritie in 5 particular, according to the words of the writ.

^h Britton. f. 1. in princip. — 4 E. 1. rot. claus. m. 1. dorso.

ⁱ 4 E. 3.

c. 14.

^k Commonwealth of England, f. 37.

^l Coke on Litt. f. 110. a.

epist. 9, rep.

1. Touching the king.
2. The state of the kingdome.
3. The defence of it.
4. The state of the church.
5. The defence of it^m.

He affirmes likewise, that there is no act of parlement, butt must have the consent of the lords, the commons, and the royall assent of the king. And (saith he,) as it appeareth by our records and bookes, whatsoever passeth in parlement, by this threefold consent, hath the force of a lawe. And this authority of parlement in legislature is so transcendent, and absolute; that it cannot be confined either for causes, or persons, within any boundsⁿ. According to that of the poet.

“ To this I neither can impose

The times; nor, bounds of things disclose^o.”

Lambard agrees; that the parlement delivereth lawes that doe bind all persons, in all causes, as well ecclesiasticall as temporall^p. And judge Fitzherbert concurre heerin; that the parlement may bind the clergy, by their acts and statutes^q. The lord chancellor Ellesmere, speaking of the king's power to interpret the law saith, “ I would not be understood, as though I spake of making new lawes, or of altering the lawes now standing: I meane not so. Neither do I mean heerby to derogate any thing from the high court of parlement, and their authority.”

^m 4 Instit.

ⁿ Co. 4 Instit. p. 9. & 25.

^o Virgilius. — Huic ego

nec metas rerum, nec tempora, pono.

^p Lamb. Courts. f. 276.

^q Fitz. Nat. Breu. f. 229.

^r Case postnati. argument Id. Ellesmere,

f. 109, 110.

Doubtles,

Doubtles, in legislative affayres, the parlement hath power concerning matters ecclesiasticall, capitall, criminall, common, civill, martiall, maritime; and all other whatsoever. The nature of the authority, to make lawes, requires an universality of the subject matter, and persons who are within the power of those lawes. If it be required, what is the end of law? It will be answered; the peace and good of the people. If it be demaunded, what is the subject matter of that good and peace? It will be said; every thing, according as accidents, and emergencyes, may make application of them, in the wisdom, and judgement, of a publique councell. And consequently, all matters whatsoever may be accounted legislative affayres, within the authority of parlement.

The like authority is naturally incident to all supream publique councells. The jewish sanhedrim did "determine, or make statutes, touching the greatest affayres of the commonwealth." The king without their assent, in greater causes, could determine nothing. They had the legislative power, with him: and nothing at all either of command, or jurisdiction, was wanting to this most eminent consistory. The like generall power, in legislative affayres, was in the common councell of the nation. As in that which king Hezekiah summoned; when the counsell given pleased the king, and all the people; "they established a decree;" made a statute, saith the syriacke version, and others agreeing with it; and doubtles, it was an enacted law for the keeping of the passeover, at a time not usuall. And sundry like lawes may be met with, enacted by their publique councells.

* Co. on Litt. f. 110. a. de reipub. summa statuisse.

p. 429.

† Bertramus, de repub. Hebræor. p. 63. Videtur

‡ Schiccardus jus.—L. 2. de synedr. Seld.

¶ 2 Chron. xxx. 4, 5. Statuerunt verbum.

In Sparta Lycurgus, and his princes, used to enact lawes, and publish them to the people; after they had bin approved by the oracle, at Delphos^x. A good example from their blind zeale, for christian law makers to consult the true God, in so weighty affayres as the legislative are; before they promulgate them, unto the people.

Demosthenes relates the manner of handling the legislative affayres, of making lawes, in Athens. That when any law was to be proposed to the people, it was first rehearsed by the law maker; then written in some place of most concourse in the city: the publique notary read it, in open councell, that if any part of it were distasted, it might be amended. But if it were liked, then it was delivered to the nomothetæ; and if they approved it, then it was to be observed as a law^y.

Macrobius cites Rutilius; that the Romans erected a markett place, where the people mett 8 dayes, about their common affayres; and on the 9th day, they were to listen to the lawes propounded by the senate. And their word "senatus consultum," is the same as with us, "an act of parlement." Rosinus also testifies the senate's power in making lawes^z.

A German author affirms, that the emperors are necessarily obliged to have, not only the councell, butt the consent of the estates: "nor can they enact any thing without their consent, or contrary therunto." Then the legislative affayres are within the power of their publique councell, the diet. Which the same author more plainly faith; "that the princes of the empire, together with the emperor, doe conclude, and make lawes, &c^a."

^x Pedro Mexio. p. 91.
antiquit. Roman. p. 280.

^y Budæus, ex Demosthene, orat. 3.

^z De
^a Lib. dissert. de ratione stat. c. 4. § 1. — Nec
quisquam absque illo, aut diversum ab illo, statuere possunt. — c. 4. § 2. p. 62.

Of the Netherlanders, Grotius reports the authority of the estates to be in legislative affayres; and “chiefly touching money, which is the sinew of the commonwealth^b.”

In Gaule, they used to hold their dietts, or generall councells; and, there to make lawes to bind the people, as antient as the time of the druydes^c. The same was continued as to legislative affayres, as well as others, in the assembly of estates, as Lupanus testifies. That “if the buisnes were about making of peace, or making of warre, sending out of ambassadours, imposing of taxes; it was established, or enacted as a law, by common consent of the three estates, their supream publicque councill^d.” Heerwith Honorius agrees; and Du Haillan, who mentions perticularly the case of the royall patrimony; “which (saith he,) by the law of France, a king cannot alien butt upon necessity, and with consent of the estates.” And concerning the imposing of taxes, a peculiar legislative affayre, not of the least moment, he saith: that “in the beginning, taxes were not levyed butt upon urgent necessity of the warres; and, by the graunt of the three estates, who first layd impositions upon the people^e.” And the word (*maltoult*), often found in our records, and acts of parlement, is there used for the same thing, the impositions on the people.

In the case of Sigismond, king of Poland; the matter was “established by a publicque edict, in the solemne councells of the king-

^b De antiquit. reip. Battavicæ, f. 35, 36. 42. Tum circa pecuniam maximè, qui nervus est reipub.

^c Pasquier recherches, p. 7.

^d L. 2. f. 453.

Si de pace ineunda, bello inferendo, regni procuratione, alicui mandanda, vecligali exigendo, ageretur; communi trium ordinum consensu sancitum est.

^e De regn. Gall. f. 537. F. 175. 247, 248, &c. La loy de France porte, qu'un roy ne le peut aliener, sans necessité, et sans le consentement des estats. Tailles, au commencement, ne se leuoyent que pour urgente necessité de guerres; et, de l'octroye des gens des trois estats.

dome'." The like act of publique councell was made for the hereditary succeffion to the crowne [of Sweden] by the late succeffefull king, Gustavus Adolphus. And the statutes of his predeceffors, king Gustave 1. and of other kings, made by the ricksdagh, are many of them extant, and in print to be perused. The like is with their friends of Poland; where no law is made without the counsell of the senate, and consent of the nobility^s.

Butt I need travayle no further in this point. All supream councells have undoubtedly the power in them of legislative affayres, to make lawes to bind the people; and that is, by their owne consent.

^r Publico statutum edicto, in solennibus regni comitiis, &c.

^s Thuanus, l. 56. 1134.

C H A P. XCVIII

In no wise to be undone.

IF the defect of power in the knights, cittizens and burgesſes, or the improvident choyce of them, doe cauſe the affayres of parlement “to be undone;” it ſhoweth plainly the neceſſity of their aſſent, to the doing of ſuch things as pertaine to parlement. And it is a full knowne trueth, that both the king, and the houſe of lords, and the houſe of commons have each of them a negative vote; that no lawe can be made without the aſſent of all the three eſtates. It is true, that every member of our parlement hath the liberty of his negative, and affirmative, vote; that is due to them: butt that makes not the buiſnes “to be undone.” It is the negative of one of the three eſtates, only, which may cauſe the buiſnes “to be undone.” As in our parlement, and in all ſupreame publique counCELLS conſiſting of ſeverall eſtates, or colledges; one part or colledge therof, or one eſtate, reſolving a matter in the affirmative; another part, colledge, or eſtate of this counCELL may, if they ſo judge fitt, reſolve in the negative. And by this diſſent, that which the others have concluded remaines, nevertheles, “undone.” Some affirme, that nothing doth more conduce to the liberty, and ſecurity, of a people; than to have their ſupreame, publique counCELLS, under ſuch ſeverall negatives. All their intereſt, their lives, liberties and eſtates, being under the power of thoſe counCELLS: it

is more safe where they are to passe from, and after one resolution, to a yett further scrutiny and consideration under another vote and negative; than where all may be taken away, as it were, att one blow, by one single person's vote; which happening to make one vote more than those of the other judgement, this one man's voice carryes with it the distruction of any man's life and fortune, and of the publique interest. Butt where there be severall negatives, in the severall estates; the party concerned gaines new opportunity to informe the trueth, and to defende himselfe; and the matter whether publique or private is againe, (and perhappes more throughly,) considered, and weighed, than before possibly it could, or should have bin. If, for example, one house be misinformed, as too often is done; or, be mistaken in their judgements, which is possible, bicause they are men: the other house, or the king, the third estate, may be better informed, or rectify that mistake; and thereby doe right to the person who, otherwise, might have bin, contrary to justice, ruined; or, to the commonwealth, which otherwise might have suffered prejudice. Butt without these severall negatives, a person may be surprized, and his life, and fortune lost; or the whole kingdome suffer detriment; by the resolution of a supreme councell, and that without redemption, or appeale: or, such impositions be layd uppon the persons, estates, and consciences of men, (wherof some examples, and too many, have bin felt,) which, in case of severall negatives, had not bin done; and which have deserved second thoughts. And by these severall negatives, is prevented the arbitrary power of princes, the domineering of great men; and the insulting of inferiour men, being gott into power, which of all other grievances is the most intollerable. Butt where the severall estates have severall negatives; the greater care is had, by each of them, of all those whose conditions are neereft to them. And as every negative is an additionall security for the freedome,
and

and safety, of the people: so the more deliberation, debate, and disquisition is had, by severall judgements, and parts of supream councells; the more ripe, and perfect, their lawes and judgements will be; and the lesse subject to any just exception, and the more obeyed by those whose representatives consented to them.

Excellent heerin is the frame, and constitution, of our parlement; in which every one of the three estates hath his negative: the king hath his negative; the lords have theirs; and the commons theirs. Butt the bishops had no negative; nor the knights no negative: butt all the lords had one; and all the commons, another; and the king, the third.

And first, of the king's negative vote in parlement. The knowne objection out of the king's oath, to graunt, and confirme the lawes quas vulgus elegerit, "which the people shall choose, or hath chosen;" is sufficiently discuffed in the remonstrances, and answers therunto, uppon this argument^a. And likewise the forme of his denyall to assent unto a bill, in the words, le roy s'auisera, "the king will be advised:" butt by this answear he doth not consent; and therby the act doth not passe into a law. When the king hath bin under age; a protector hath commonly performed, in the king's right, what himselfe being of age should have done; and the like in the king's absence, by a custos regni; or in his sicknes, by commissioners: and all, in the king's name. Butt after the death of H. 3. his son E. 1. being then in the holy land, and not comming into England till two years after his father's death; the lords, and parlement, in the meane time tooke care for preservation of the peace of the kingdome, and the king's right of succession; and made severall lawes for that purpose, without the king. And

^a May 26, 1642.

att other times, “in the flames of warre, and necessity^b ;” the lords, and commons, have done acts, and made ordinances, which have not bin used to be cited for precedents. Butt the experience of all times, and the authority of our law, gives the king an undoubted negative, asserting; that every act of parlement must have the consent of the lords, and of the commons; and, the royall assent of the king. And whatsoever passeth in parlement, by this threefold consent, hath the force of a lawe^c. The like is described by Polydore to be the constitution of our parlement: “that nothing is accounted firme, butt that which both houses, or the major part of them, doth consent unto; and which the king doth approve^d.” Who therefore, last of all, is demaunded his judgement, by the chancellor; and without his assent, it hath no force; which is a full argument of his negative. Sometimes with the king the lords have joyned, in the negative uppon the commons; as in E. 3. time, where the commons petitioned, that “the new custome lately sett uppon cloth, might be taken away.” The answer is: “The king, prelates, earles, and other great men will, that the custome shall stand^e.” Some negatives are by the king alone. As, to the petition, that none of the king’s servants doe impleade any man in the marshalsey; the answer is in a plaine negative: “the king will not the same request.” And his answer to the next petition is, also, plaine: “the king thinketh the same petition nothing reasonable^f.” And many more occurre in our records of the like nature. And though the usuall denyall be in those civill, and gentle words; *le roy s’auisera*: yett that is a full negative; as if it were

^b In flagranti bello, et necessitate.

^c 4 H. 7. 18. b. 7 H. 7. 14. 16.

11 H. 4. 27. a. Br. 134. Fortescue, f. 20. Dyer, f. 92. Sir Tho. Smith, f. 37. Co. 4. Instit. f. 25.

^d F. 477. Nihil ratum habetur, nisi quod major pars utriusque confessus senserit; idque rex comprobârit.

^e 21 E. 3. rot.

parl. n. 31.

^f 25 E. 3. rot. parl. n. 34, 35.

said, "the king will not assent." And that, to which he gives this answer, is in no wise a lawe.

The lords have also an undoubted negative, in our parlement. It is a cleare, and experienced trueth; that if any person or persons, if any sort, or degree, of men, doe domineere, or beare rule over their brethren; when other sorts, and degrees among them, are excluded, from having any share, either by themselves or by their deputies, in the supream power, and government over them: this is certainly lesse a free state, or commonwealth; than when every sort, and degree, of men in the kingdome, have their share in the supream counsell, and are admitted to them. If those of the democraticall sort, or of the aristocracy, or of the monarke be excluded; if king, lords, or commons, be omitted: the liberty of the people is thereby lessened; and the common good, and interest, diminished. Butt where all are admitted, (as all are concerned;) all will be the better satisfied. And all, both king, lords, and commons, will joyne in consultation, and action, for the good, and common profit of the whole body: Which, thereby, may truly be stiled a free state; and more properly, than when some are injured by an omission, and perhappes some few prevayling men insult, as an oligarchy, over all others. The constitution of our parlement gives every one his right, and share. And as the king, and commons, have their negatives: so the lords have theirs; and sometimes they have joyned with the king, in a negative upon the commons, as in the record before noted. Sometimes they have joyned with the commons, in a negative upon the king; as in that passage in 7 E. 2. when the king demanded in parlement, as well of the clergy as of the laity, a subsidy of money, for the redemption of the earle of Richmond taken prisoner by the Scots: our historian relates, that "this request, at length, was by
common

common vote, denied ;” wherein the lords and commons joyned, in this negative, against the king^s. And they give the reason of their negative ; that “ contribution was to be made only for the king, queen, and eldest son of the king, in case they were detained in captivity.” Sometimes the lords alone have exercised this negative ; as in that noted example, than which few matters doe better deserve a negative, and imitation : when all the bishops instanced the lords to consent, that all such as were borne afore matrimony should be legitimate, as well as they that be borne within matrimony, as to the succession of inheritance ; “ for so much as the church accepteth such for legitimate.” All the earles, and barons, with one voice, answered ; “ we will not change the lawes of England^b,” which hitherto have bin used, and approved. But precedents need not be heaped up, in a matter of so unquestionable cleernes, as this right of the lords negative vote in parlement.

I come now to the negative of the commons ; which is, equally with the other, without question. If the learning be warrantable, (as many hold it is,) that no commoner shall be questioned in parlement for his life, butt first he ought to be impeached by the house of commons ; and that being transferred by them, to the house of lords, where the party is to be prosecuted, and to receive his judgement uppon that impeachment : this is an argument of their negative power heerin, as to these judiciall proceedings. And as to the legislative affayres, it will not be doubted, butt that they have ever had their full negative to any law proposed to them. And naturall reason seemes to warrant, and require it ; that the people should not be bound, without the consent of those who are their deputies, for that purpose. And therefore the writ is, (as hath

^s Tho. Walsingham. f. 119. 20. Hæc petitio tandem, voce publica, penitus est negata.

^b Stat. Merton. c. 9.—Nolumus leges Angliæ mutare.

bin noted;) that those deputies be impowered by their principalls, the electors, “to do, and consent, to such things as shall be ordeined¹.” Which doubtles gives them a negative, as well as an affirmative; a dissent, as well as a consent. And none can imagine, that they are called together to consent only in the affirmative; and not to have a negative, if their judgements shall so direct them. Butt the constant practise, and the nature of the thing, doe sufficiently cleere the matter: that the commons have the like negative, with other estates; as no new law can be made, nor old law repealed, or altered, butt with their consent. No man can be prest to serve in any forein warre, or to go out of their countrey, (except uppon the suddain comming of strange ennemies;) without the commons assent therunto. Especially, in the matters of imposing taxes, rayfing money from the people; they have a fuller negative, than the other estates; and are said to carry the people’s purses; and they, only, are to have the power of it. In so much, that no motion can be made for the rayfing of moneys, butt it ought to be begonne in the house of commons; otherwise, they take it for a breach of their priviledge, and will deny it uppon that ground only: as may be found in the records, and journalls, of our parlement. And this is the more confirmed by the king’s answear, and royall assent, (which is feldome denyed,) to a bill of subsidy; “the king thanketh his good subjects, the commons^k :” and, the lords are not mentioned, therein.

This negative of the commons appears in a petition of their’s, as antient as E. 3. time; where they putt in a bill, in parlement: that no statute, or ordinance, be made, nor graunted att the petition of the clergy; “unlesse it be by assent of your commons¹ :” nor

¹ Ad faciendum, et consentiendum, &c.
jects, les communs.

^k Le roy remercie ses bons sub-

¹ 51 E. 3. rot. parl. n. 46.—Si ne soit per assent de

vos communs.

that your said commons be not obliged by no constitutions, which they make for their advantage, without the assent of your said commons. And they plainly give the reason, and challenge their negative, saying in the conclusion; "for they will not be obliged to none of your statutes, nor ordinances, made without their assent^m:" to which the king answers; "lett this matter be declared in speciall."

Another petition of their's, in H. 5. time, is a testimony both of the king's negative, and of their owne; the title wherof is, in the French of that time, to this effect. "Be it remembred, that the commons delivered to the king, our most soveraigne lord, in this present parlement, a petition wherof the tenor followes, worde for wordeⁿ."

The petition also, in the English of that time, was thus:

"Our soverain lord,"

"Your humble, and trewe lieges, that ben come for the comens of your lond, bysechyn onto youre rigt weznesse; that so as hit have ever be thair liberte, and freedom, that ther should no statut, ne law, be made, of las than they yaff therto ther assent. Considering that the comens of your londe, the which that is, and ever hath be, a member of your parlement, ben as well assentors, as petitioners. That for this time forward, by compleinte of the comens of eny mischief, axhing remedy by mouth of ther speker, for the comens, other ellys by petition written, that ther never be no

^m Car eux ne veulent estre obligez à nul de vos estatutz, ne ordinances, fais sans leur assent.

ⁿ 2 H. 5. rot. parl. n. 10. pars 2. Item fait à remembrer, que les communes baillèrent à roy, nostre Sr. tres souverain, en cest present parlement, une petition, dont le tenure en fuyt, de mote à mote.

law made theruppon, and engrossed as statut and law, nother by additions, nother by diminucions, by no manner of terme, ne termes, the which that shold chaunge the sentence and the entent axhed by the speker's mouth, or the petitions before-faide, yeven up in writing by the manere aforesaid; without assent of the afore-said comens. Considering, our soverain lord, that it is not in no wise the entent of your comens, gif hit be so that they axhe you by speking or by writing two things, or three, or as many as theym luste; but that ever it stonde yn the fredome of youre hie regalie, to grant which of thoo that you lust; and to werune the remanent."

The answere is:

"The king, of his grace especiall, granteth; that fro henceforth nothing be enacted, to the petitions of his commune, that be contrarie of her axhing; wherby they shold be bound without their assent: saving alwey to our liege lord his real prerogatif, to grant, and deny, what him lust of their petitions, and axhings aforesaid."

Butt I am to hasten to the negatives, in publique councells, of other nations. And first, of the Hebrewes, wherof a great instance is in the case of Jonathan; who being condemned, by his father's vote, to dye; a great severity, and injustice! The people said unto Saul; shall Jonathan dye, who hath wrought this great salvation in Israel? God forbid! As the Lord liveth, there shall not one haire of his head fall to the ground. For he hath wrought with God, this day! So the people reskued Jonathan, that he dyed not°.

I know the objections against this testimony. That heere was an act of a seditious rabble, tumultuously opposing their king: not, a

• 1 Sam. xiv. 45.

confederate act of a sober, and settled publique councell, uppon the right of their just authority. [And this appears] 2. from the latter words of this text; “so the people rescued Jonathan, that he dyed not.” “Rescue” is a worde of force, and implyes a thing done “by popular rage,” and fury of the mutinous multitude^p; rather than, by the serious deliberation, and judgement, of a composed body of a councell.

The answear heerunto may require a consideration of the context of this, and the next chapter before it, where the story is sett downe; and, in the 38 verse of the 14 chapter, Saul saith. “Draw ye neere hither, all the chiefe of the people; and know, and see, wherein this sin hath bin this day.” The hebrew word, in this 38 verse, doth signify “all the corners of the people;” and in the same sence, it is rendred by the greeke, and vulgar latine^q; and a little fuller by the chaldee version which is, “all the heads of the people.” And the syriack saith, “all the families of the people.” The same hebrew word is used for a “corner,” or angle, in the psalme. *Lerish pinnah*; the same stone, which the builders refused, is become “the head of the corner.” Some translations render it “the corners;” others say, “the heads of the people;” ours is, “the chiefe of the people.” And if they were such, to whome Saul spake; it was not the rude, and seditious multitude that gave their negative, to the king’s resolution of putting Jonathan to death; who passed a very severe sentence, against his guiltles son. Butt the people, that is the chiefe, or the heads of the people, past their negative uppon king Saul; and rescued Jonathan from death. Which leadeth me to answear the other objection: that this was an act of force, a “rescous;” not a deliberate negative

^p Per rabiem popularem.

πάσας τὰς γωνίας universos angulos populi.

Pf. cxviii. 22.

^q *I Sam. xiv. 38.* כל פנות העם.

פנת—לראש פנה.

of a publique councill. It is already showed, that those who rescued Jonathan were the heads, or chiefe, of the people; who were the members of their publique counsell, and summoned by Saul, and consulting with him. And as to the word, "rescued him;" we may see what sence the words heere used, doe beare in the original. They cleerly signify, that "the people did redeeme Jonathan:" and beare no interpretation of force or tumultuousnes; butt, a meeke taking of him from a punishment. As our Saviour redeemed sinners, from death eternall; who was so farre from using force, or tumultuousnes, that he redeemed us by giving his owne life for us.

The greeke version suits with this interpretation; and the same truely rendred, in the latine version of it, is to this effect. That "the people interceded, or intreated for, Jonathan, that he might not dye." The vulgar latine, and the chaldee version, is to the same effect: "that the people freed, or delivered, Jonathan from death." The french translation agrees, that the people delivered Jonathan: and divers antient MS. of the latine versions, which I have, doe give the same sence. By all which it appears, that the chiefe, or heads of the people, being summoned by Saul, as a publique councill; not the people in a tumultuous rage, butt the heads of them in councill with their king; did by intreaty, and perswasion, the best way to prevail with princes, alter the resolution of Saul; and saved the life of Jonathan, by their negative vote uppon the king. And had it not bin for this negative, and second judgement; Jonathan had bin ill rewarded, for his good service.

וַיִּפְּרוּ הָעָם אֶת יוֹנָתָן. καὶ προσήγαγε ὁ λαὸς περὶ Ἰωνάθαν. Et oravit populus pro Jonathan.—Liberavit ergo populus Jonathan, ut non moreretur. Ainsi le peuple delivra Jonathan, et il ne mourut point.

I find another negative; when Benhadad king of Syria, with his 30 kings and great army, besiedged Samaria; and sent a summons to the king of Israel: to which he inclined to submit, as he had done before. Butt the elders of the land, being called together in publique councell; both they, and the people, (that is, their representatives,) gave their negative against the king's inclination. And all the elders, and all the people, said unto him: "hearken not unto him; nor, consent". And this negative counsell was approved by God; who delivered Benhadad, and his great host, into the hands of the Israelites, who slew them with a great slaughter.

Another negative we find in the princes, and people; against the priests, and prophets, mett together in publique councell. Jeremiah, being accused for reprovng the people; and judgement given against him by the priests, prophets and people, "thou shalt surely dye:" the holy prophet speakes with boldnes the word of the Lord, to them; and saith to them. "I am in your hand: butt know for a certaine, that if you putt me to death; ye shall surely bring innocent blood uppon your selves." Heeruppon the princes, and deputies of the people, are satisfyed; and declare their negative to the priests, and prophets, being another part of the councell then sitting, to this effect. "The man is not worthy to dye; he hath spoken to us, in the name of the Lord our God". By this negative vote, the holy prophet is delivered from death; and the nation, from having innocent blood brought uppon them.

Another precedent of a negative vote, in councell, is that where Paul, being brought before the chiefe priests, and all the councell; and he perceiving, that the one part of them were Pharisees, and

^u 1 Kings, xx. 8, &c.
v. 15.—v. 16.

^w Jere. xxvi. 16.—Jere. xxvi. 8.—v. 14.—

the other part Sadduces ; he wisely, and for his owne defence, declares in the councell, (as our translation is, he cryed out.) “ Men and brethren ! I am a pharisee. Of the hope, and resurrection, of the dead, I am called in question. Then there arose, (saith our translation,) a dissention betweene the Pharisees, and Sadduces ; and the multitude was divided.” The æthiopick version reades it, that “ they did strive, did contend in words, or debate :” which is rendred by the greeke, and vulgar latine, “ a frame of speech, a perseverance, and constancy in opinion.” The text gives the reason of this controversy : “ for the Sadduces say, that there is no resurrection, neither angells nor spirits ; butt the Pharisees confesse both.” Then comes the negative. “ And there arose a great crye ; and the scribes that were of the Pharisees part arose, and strove, saying ; we find no evill in this man. Butt if a spirit, or an angell, hath spoken to him ; lett us not fight against God^x.”

That this strife was in words, appears in this 9 verse ; “ they strove, saying.” The syriacke reads it ; “ they disputed, interchanged words, debated with them.” The æthiopick is ; “ they contended, and sayd.” The arabick is more full ; “ disputing for him, and saying^y,” &c. Plainly there was a hot debate, in the councell, uppon this plea, which Paul had prudently putt in : and the negative vote of one parte of the councell, against another part of them, wrought the apostle’s deliverance att that time ; and preserved him for that great worke, of testifying the name of our Lord Jesus.

The jewish sanhedrim had their members of each tribe ; and so, in a manner, representing all the tribes. And some conjecture, that

^x Acts xxii. 2. 30.—v. 7.—Decertarunt, litigarunt, et dixerunt.—Constitutio orationis, perseverantia, constantia.—v. 8.—v. 9. ^y Altercabantur cum eis. Litigarunt, et dixerunt. Disputantes pro ipso, dicentes.

those of each tribe had their respective negatives. The whole council, cleerly, had a negative uppon the king; as Schicchardus expresseth it, speaking of the sanhedrim att Jerusalem; "without whose consent, in weighty matters, the king could determine nothing:" which shoves the council's negative. And in some cases, it is held; that the king had a negative uppon the sanhedrim. "His power, neverthelesse, was not absolute; butt, variously, limited^z." And this limitation was, by the coordinate power of the sanhedrim; in the institution of whom, it is sayd by God, to Moses: "they shall beare the burden of the people with thee; that thou beare it not thy selfe, alone^a."

I come to the Græcians, who had their severall negatives uppon their senates; wherof that in Athens is a testimonie. When a law was there made; they published it to the people, who were demaunded; "whether they liked the law or not? and no law, or draught proposed, was of any force; unlesse it were subscribed by the hands of the nomothetes^b," who had a negative vote in the making of any new law. They had a perticular negative, and the people a generall negative, uppon the acts of the senate.

The antient state of Rome found the inconvenience, of the want of negatives, in their government; and therefore Valerius, in his consulship, procured a law of appeale unto the people, from any magistrates whatsoever. And the tribunes of the people had a negative uppon the senate; without which they would not be pacified in their tumults. "And the tribunes authority grew up, to that

^z Jus reg. Hebræor. c. elect. theor. 2. Sine cujus assensu rex, in gravioribus causis, nihil poterat decernere. Ibid. cap. subditi. p. 108. Cujus potestas non absoluta erat, sed varie limitata.

^a Num. xi. 17.

^b Gothofredus, l. 2.

p. 700. Si leges placuissent, an secus? Neque valere ulla poterat lex aut tabula proposita, nisi nomothetarum subscripta manibus.

height: that what the senate decreed was confirmed, and stood valid; if the tribunes of the people did approve therof." Something also of the negative power, in the augures, appears in their ælian lawes; and, in the severall parts of the senate, by the fempronian lawes^c.

The power of publique councells, in the empire, is divided into two parts; wherof the emperour hath one part, and the estates the other. "So that, in the councells, an equall power belongs to the estates with the emperor, in their determinations." Which is a cleere negative; and is further expressed, by this author; "that somtimes, for the estates to contradict the emperour is no new thing^d." Heerwith agree other of their authors: and of the negative which each estate, amongst them, hath uppon the other, Paurmeistre thus alleadgeth it; wherin others agree with him. That nothing is adjudged to be established, if the matter cannot be agreed between the emperor and the estates; butt it is putt unto a free, and voluntary, convention. And he states the negatives; "that neither the emperor, out of the fullnes of his power, without the consent of the estates; nor the estates, without the consent of the emperour; can determine any thing." So that both the emperor, and the estates, have their respective negatives^e.

In the lower Germany, the estates had a full negative uppon their princes, who could not marry, without the consent of the estates.

^c Gothofred. l. 1. p. 22. Quorum autoritas ad id ascendit fastigium; ut ea quæ senatus decrevisset, ita demùm rati forent, si tribuni plebis ita censuissent. Rosinus, de antiquitat. Roman. l. 8. c. 3. p. 363.

^d Millerus, c. 15. p. 134. Adeoque ut in comitiis æqualis potestas statibus, cum imperatore, in discernendo competat. c. 15. Cui tamen à statibus quandoque contradici, novum non est.

^e Paurmeistr. d. c. 2. n. 50. Math. Steph. l. 2. de juridict. pt. 1. c. 1. L. differat. de ratione stat. imper. German. c. 4. § 2. p. 64. Nec imperator ex plenitudine potestatis, invitis ordinibus; nec ordines, invito imperatore; quicquam statuere possunt.

Nor could any “new impositions be layd, or exemption be graunted, from payment of them,” butt by their consent^f. They had also their negative, touching the undertaking of any warre; or laying any burthens uppon the people, which were called preces, “requests,” bicause att the request of the princes they were decreed by the states^g. In their present constitution each citty, represented by their deputies, hath a negative vote against all the rest, in their publique councells. And unlesse the deputies of every citty respectively concur, in the vote of the assembly of the states generall; nothing can be determined to bind them: so that, in effect, every citty hath a negative uppon all the rest.

The french authors doe hold the best establishment of a commonwealth to be; when “the opinion of the soveraigne magistrate is moderated, by the remonstrances of divers persons of honor, being constituted into an estate for that purpose^h,” which is their severall negatives, of publique councells: and accordingly, they are reckoned among the bridles of their king’s power; and “therfore, (saith Sefellius,) senates, and judicall courts are instituted, which in our language are called parlementsⁱ. Another of their authors affirms; that if any authority, in Fraunce, can impose limits to the kingly power, “it is the assembly of all the three estates^k :” as it is, (saith this author,) in England, and Scotland the generall parlement; and the diette, in Germany. And the kings of Fraunce

^f Grotius de antiquitat. reip. Battav. f. 37. Nova vectigalia neque imponantur; nec cui vectigalium [exemptio] detur.

^g Ib. f. 41. Preces; quia ad preces

principum, ab ordinibus decernebantur.

^h Pasquier, recherches, f. 42. b.

L’opinion du souveraigne magistrat estoit attemprée, par les remonstrances de plusieurs personnes d’honneur, estans constituer en estat, pour cet effect.

ⁱ Sefellius, de

repub. Gall. f. 22. Ideoque sunt instituti senatus, et judicia, quæ nostrâ linguâ vocantur parlamenta.

^k Honorius, de regno Galliæ, f. 537. Ea quidem est omnium trium statuum assemblea.

are sayd to make a perpetuall covenant: that as to the alienation of the holy patrimony, or the publishing of lawes, "it should be done with the people's consent; so that every one of these should be of force, if the fathers, or senators, were authors therof¹."

In the lawes of Normandie a doubt is made, (in the language of that time it is recited,) "whether the prince can make lawes, without the councell of the earles, barons, prælats," &c. To which is answered; "that he, alone, cannot make a law^m." And the reasons are there given, wherby it appears; that the estates, in the parlement of Normandy, had a full negative uppon the duke; and the duke, also on them.

In Sicily the king, or vice roy, can rayse no contribution; nor alter any thing in the gouvernement: without the consent of all the estates, which they call the three armes; every one of which hath its negativeⁿ.

The like is among the Swedes, and Gothes: where the king

1. Can rayse no money extraordinary;
2. Can make no new law, or alter or repeal any old law;
3. Can make no offensive warre, nor compell any man to serve as a soldier; without consent of the estates in the ricksdagh. And, in these cases, each estate hath a negative.

The king hath a negative uppon the estates, and the estates have a negative uppon the king; and each perticular estate hath a nega-

¹ Ærodius, de auctorit. rer. judicat. f. 6. Ad populum agatur; ita horum unumquodque in posterum valeat, si patres auctores facti sint.

^m Graund costumier de Normandie, f. 2. Glos. Si le prince peult faire loix sans le conseil des contes, barons, prælats, &c.—Qu'il ne peult, seul, constituer une loy.

ⁿ Gothofred.

l. 2. p. 250. & 697.

tive uppon all the rest : and all of these must consent, before any law can be made ; or, any man's life, liberty, or fortune, be taken away by them. And in these proceedings, though of the publique coun- cells of the Swedes, and Gothes ; is a repetition of the constitu- tion of our English parlement ; and hath a great affinity therwith : and, as in most other points ; so peticularly, in the negative votes of each state, in publique councells. Which policy hath bin like- wise practised in most countreyes, where they have enjoyed the be- nefit of supream publique councells, as an essentiall part of them ; and much conducing to the good, and security, of the people under them.

C H A P. XCIX

Butt we will not.

IN the parlement 2 Car. 1. wherein I had the honor to be a member, the case of Sir Edward Coke was much debated in the house; who, being sherife for Bucks, was chosen one of the knights for Norfolke: and whether, by this clause of "nolumus" in the writ, he were incapable of sitting as a member of the house of commons, was the question; and much debated, both at the committee, and in the house, with difference of opinion. Yett Sir Edward Cooke, de facto, did sitt in that parlement. Uppon search of the records it appeared; that there was not any mention of this clause of "nolumus," in the writt, untill 13 E. 3^a. when a great aide was required, by reason of warre with France. The commons prayed; that writs be sent, that the "worthiest of knights be chosen;" and that "lawyers, and sherifs, be left out." In the next year, writs issued out; butt no clause of nolumus in them, touching sherifes, 46 E. 3. no clause of "nolumus" in the writ; butt then, an ordinance was made; that "no man of law following buisnes in the king's courts, nor sheriffe, be returned or accepted knights of shires." To which the king answers, thus, the king willeth, that "knights, and serjeants (that is esquires,") of the best ranke in the countey, be returned from henceforth, to be knights in parlement^b.

^a 13 E. 3. rot. parl. n. 8.^b 14 E. 3. rot. claus. m. 23.—46 E. 3. rot. parl. n. 13. Que nul home de ley, pursuont bufoignes en la court le roy, &c.—n. 14.

In the next yeare, a writ went out, commaunding the sherifs to choose the best of knights, and esquires; and this was the first time, that this clause of "nolumus" was in the writ: butt in the writs to the 5. ports, the clause is omitted^c.

49 E. 3. the clause of "nolumus," is in the writ, as in 47: butt none in the writ for Bristol^d.

50 E. 3. the clause was in the writ as before^e.

1 R. 2. the clause is in the writ, butt not in that for Bristol, yett afterwards putt in. And from 1 R. 2. till 12 R. 2. the clause of "nolumus" was constantly in the writ^f.

7 R. 2. three knights were putt out, bicause "bannarets could not be chosen;" and another was putt out, "bicause he was of the king's retinew;" another, bicause he was "the king's servant." Yett in the writs, is no clause of "nolumus," to forbid such to be elected^g.

12 R. 2. the clause of "nolumus" is in the writ, as now; some words, which were formerly part of it, being now left out. In that manner the clause continued in the writs of summons untill 5 H. 4. when the clause of "nolumus" excluded sheriffes, and lawyers also^h.

7 H. 4. the commons putt up a bill, complaining about matters of election; and praying, that elections may be without prayer, or commaundementⁱ.

^c 47 E. 3. rot. claus. m. 13.

^d 49 E. 3. rot. claus. m. 6.

^e 50 E. 3.

rot. claus. m. 6.

^f 1 R. 2. rot. claus. m. 7.

^g 7 R. 2. rot. claus.

m. 32. Banaretti eligi non possunt—quia de retinentia domini regis—quia familiaris regi.

^h 5 H. 4. rot. claus. pars 2. m. 4.

ⁱ 7 H. 4. rot. parl.

8 H. 4. writs issued out, commaunding; that the parlement members shall be chosen, according to the statute: and in these writs was no clause of “nolumus^k.”

11 H. 4. no clause of “nolumus” is in the writ.

12 H. 4. that clause is likewise omitted.

14 H. 4. in the writs of summons, the clause of “nolumus,” was in the writ, to the same effect as now it is. And since that time, downwards, this clause of “nolumus” hath bin continued in the writs of summons. Only in H. 8. time, in the writs to the deputy and counsell of Callis, and to the major and burgessees of Callis; the clause of “nolumus” is omitted^l.

In the case of Sir Edward Coke it seemed to be agreed; that the ordinance of 46 E. 3. was not made uppon petition of the commons; butt an act of the king, and lords, only, without the commons: and that it, therefore, hath not the force of a law. Yett, as a prohibition of the choice of such persons, by the king's writt; it hath bin long continued, and generally observed: as appears, by the collection out of the records in this chapter mentioned. And some of the debates, theruppon, are reserved for the following chapters.

^k 8 H. 4. rot. claus. m. 2.

^l 11 H. 4. rot. claus. m. 32. 12 H. 4. rot. claus.

14 H. 4. rot. claus.

C H A P. C

That you or any other sherife.

IT hath bin before noted, that 13 E. 3. a great aide being demanded, the commons were carefull, that the best men should be chosen knights of shires, who might not be too forward to graunt greater aides than were necessary; and therefore, petitioned, that lawyers, and sherifs, might not be chosen. Besides this; there seemes to have bin a disgust both of the commons, and of the great men, against sheriffes who, as ministers, execute the proces of law uppon them: and, against lawyers, as being a hinderance to their oppreffions, by pleading the right of law, on the behalfe of their clients. Theruppon the ordinance 46 E. 3. before noted, was made in the lords house, as appears by the rolle; and this ordinance was to exclude both the sherifes, and lawyers, from being chosen members of the parlement, and accordingly, the present clause was afterwards inserted in the writs, to exclude the sherifes; who, before that time, had bin usually admitted to be members of the parlement: butt, uppon this prohibition in the writ, were now omitted to be chosen. Yett, notwithstanding this ordinance, the prohibition in the writ was not then extended to lawyers; butt they were chosen members of parlement, notwithstanding the ordinance which Coke holds, by generall words of other statutes, to have bin repealed, and made void^a. Butt in 5 H. 4. the king

^a 5 R. 2. stat. 2. c. 4. & 7 H. 4. c. 15. Co. 4 Instit. p. 48.

being in great want of money; and fearing, that if the lawyers were parlement men, they would oppose his excessive demaunds, and hinder his illegall purposes, (according to their knowledge and learning in the lawes, and publique affayres;) to prevent this, the king issued forth writs of summons, with a clause of “nolumus” in them, to this effect. We will not that you, or any other sherife of our kingdome, “or any other man of lawe, by any means, be chosen^b.” This parlement was held 6 H. 4. and was called the lacke learning parlement; either, (saith our historian,) for the unlearnednes of the persons, or for their malice to learned men^c. It is stiled by Thomas Walsingham, in his margent, “the parlement of unlearned men.” And from them thus packed the king, (saith our author,) obtained a graunt of an unusuall taxe; and, to the people, “full of trouble, and very grievous^d.”

The commons sence heereof; and knowing their owne freedom, to choose whom they pleased for their deputies in parlement; would not be debarred therof by this ordinance, nor, by the clause of “nolumus.” Butt, knowing the lawyers to be equally interessed with others, in the rights and liberties of the nation; and best understanding them, and the more able to defend them by their learning in the lawes, and the more ready to oppose the infringers of them; have esteemed the lawyers to be fitt councellors, in the publique councells of the kingdome; and, equally with any others, capable to serve their king, and countrey: have accordingly, (and with no unanswerable successe,) made constant choice of some lawyers, to serve for them in the parlement^e.

^b 5 H. 4. rot. parl. pars 2. m. 4.—Sive aliquis alius homo ad legem, aliquo modo sit electus. ^c Speed hist. Engl. f. 759. pl. 42. ^d Parliamentum indoc-
torum.—Fricabilis, et valde gravis. ^e Speed hist. Angl. p. 458. pl. 35.

The like passage, to this of our lawyers, is related in the roman state^f. Where the advocati, or lawyers, pleading for their clients rights and for every man's liberty, to whome they were patroni; and, that the lawes might be observed: this gave so much offence to the great ones, by a checke to their oppressions, and unjust execution of their lawlesse wills; that, to suppress the advocates, they had procured in the senate the lawe cincia to be made, by which it was provided, that for pleading of causes none should take either money, or guift. And this law was endeavoured, uppon the like grounds, to be sett on foot againe, presently after the death of Tiberius. Butt when some alleadged, that this would cause the want of counsellors and advocates, wherby the poore, would be oppressed by the rich, and mighty; that eloquence, and learning, did not come by chance, or gratis, without study and labour; that the care of a man's owne family was neglected, whilest he intended other men's affayres; that many maintained their life by warre, some by tilling of the earth; that no man laboured to attaine knowledge, unlesse he saw some commodity in it; that the meanest of the people endeavoured, what he could, to better his estate: and that if the esteeme, and rewarde of studyes, should be taken away; studies also would decay, as having neither glory, nor honor.

Uppon these reasons, the senate held it not just, to lessen the esteeme of lawyers; nor, to take away the honorarium of advocates: only, they limited the same to 10000 sesterces, which some compute to about 78 l. of our money. Butt even that law, of limiting the reward, had no long continuance, or compliance with it.

Their lawyers were often senators, and soldiers; and many of their soldiers were lawyers. Wittnes that passage of the soldier

^f Tacitus annal. l. 11.

who, being uppon his tryall, demaunded to have an advocate to plead for him; and Augustus did assigne one for him. Butt the soldier, unbracing his doublet, showed his naked breast; and cryed out to Augustus.

O Cæsar! when I fought under thee, I received these wounds in my own breast. And now my life is in question, before thee; dost thou assigne another, to plead for me? With that, (saith the story,) the emperour came downe, and in his owne person pleaded; and, (which is not strange for such an advocate,) carryed the poore soldier's cause for him. Nor did he, or any other, account this action a disparagement, (as some of our fine grandees perhappes would doe;) butt, an honor to him.

Among the Hebrewes, it was a chiefe qualification for a member of their sanhedrim to be "learned in the law." And it is affirmed, that ordinarily, they were chosen out of the most eminent lawyers; and, that none were admitted into the sanhedrim, butt men of excellent mindes in the discipline of the law, of great knowledge, and not ignorant of other arts: that they were wont to be skillfull in the 70 languages, or as it may rather be understood, "skillfull in languages." They were to be learned in the art magicke, and in astrologie; that the sanhedrim might be able to judge of these arts; as likewise, of phyficke, arithmeticke, &c: and, to have languages; to the end that the publique councill might have no need of an interpreter; having often occasion to deal with foreiners^s.

Uppon the text, of the wise men comming from the east to worship Christ^h; the ingenious, and learned, parson of my owne parish,

^s Juris peritus. Maimonides. Halach sanhedr. c. 2. § 1. — R. Jochanan. in Gemar. babylon. Linguarum periti. ^h Mat. i. 2, 3.

makes these observations. That the sober use of arts, and sciences, is no hindrance to a man's coming to Christ. A man may have both a learned head; and, a sanctified heart also. This learning of the wise men, did them no more hurt, than it did Moses; of whome it is said, that he was learned in all the wisdom of the Egyptians; no more than it did Solomon, who surpassed all the men of the east in their owne wisdom, and learning; no more than it did Daniel, who was admirable in the arts of the Chaldæans¹.

True it is, that in the oeconomy, household, and household worke of God; the buisnes is never so handsomly done, as when Hagar waites on Sarah; the handmaids, the arts; on the mistress, divinity.

Ignorance in an advocate, or counsellor, by reason of our estates committed to his trust; in a physitian, by reason of our lives in his hands; is not to be indured: and, if in a divine, "wo to the idle shepheard!" If in a senator, they may be reckoned among those, of whom the prophet saith. "His watchmen are blind; they are all ignorant; they are all dumbe dogges^k."

As Christ chose fishermen, for his disciples; so he made them fishers of men; gave them, not only a calling, but ability fit for it: so furnished them with language, and knowledge, proportionable therunto, that it is sayd; "the people wondered att their wisdom and knowledge, and knew that they had bin with Jesus^l."

In the time next the apostles, we find imployed, learned men of all sorts; Zenas, the "expounder" of the law; Luke, the physitian; Apollos, the mighty orator; and Paul, with his "all manner of learning" which he attained att Tharsus, as famous an university for Asia, as Athens was for Greece^m.

¹ Acts vii. 22.—1 Kings iv. 30.—Dan. i. 4.

xi. 17.—Isai. lvi. 10.

^k Acts ii. 6.

^l Væ pastori idolo! Zach.

^m Ονομαείσιμος.—πολλὰ γράμματα.

The ecclesiasticall stories, in the next age, mention what men were preferred: such as were of most exemplary piety, for they were most of them martyrs; and men of most eminent abilities, for they were all of them doctors.

And indeed in all places, the veneration given to their priests was because they were held more learned than others; especially in that learning, which tended to the immortality of the soule. It was the opinion of learning, which brought esteeme to the bardes, and druydes; and will bring respect to all, who shall attaine unto it. And learning is generally favoured; having no enemy, butt ignorance. It is of excellent use in all matters, and conditions. The orator, by experience, affirms; that "by study, and learning, prosperous things are adorned, and unhappy things are relieved."

Those, who are learned in the lawes in Germany, doctors, and licentiates, and others, are in great repute with the princes; and, where they reside in free townes, are held in great esteeme, chosen into their councells and magistracyes of best note; and, are in like honor in other countryes. Nor doe they scruple, in some places, to give unto a doctor the title of your excellence.

Butt where gallantry, and debauchery, are in fashion; and where much earth is more regarded, than much learning; where wealth taketh place of virtue, (as it generally doth :) it is not strange, if contempt have the chayre of honor; if learning, and worth be despised, by ignorant, and worthlesse men.

It is no marvaile, if Æsop's cockes doe value dunghills, before jewells: or, if the menue people will sooner trust their lives, liberties, and fortunes, in the hands of a debauched, ignorant, rich land-

• Studiis, ac litteris, res secundæ ornantur; adversæ adjuvantur.

lord ; than, of a wise, pious, and prudent gentleman, of lesse revenue. They, who will give better meat to a hound, than to a schollar ; may expect Actæon's fate, to be torne by those whom they have fedde. And they, who will have a " nolumus" of learned senators ; must be contented with a " volumus" of uncouth lawes. Which I hope will never be the fate of England ; butt, that we shall rather follow the opinion of Solomon : " a wise man will heare, and will increase learning °."

• Pro. i. 5.

C H A P. CI

Of our said kingdome.

BY this clause of nolumus in the writ, no sherife "of the kingdome" is to be chosen a member of the house of commons: and whether this clause be binding, or not, hath bin much controverted.

Two things are objected, principally, against the election of a sherife, to be a knight of the shire.

1. The ordinance 46 E. 3.

2. The "nolumus" in the writ.

For the ordinance, it was objected to be a binding law; as the course was, in those times; and, agreeable to the law of England, by which the sherife is a conservator of the peace; and by whome many things are to be done, which cannot be done by deputy. And the office of a sherife, and of a knight of the shire, together are incompatible. For a sherife ought to reside in his countey^a, wherof he hath the custody; and ought to be constantly present to conserve the peace of it, and to resist and suppress any invasion, or insurrection: and a parlement man ought to attend, in parlement. Butt a sherife, being a knight of the shire, cannot be pre-

^a 4 H. 4. c. 1.

sent in both places ; nor execute both dueties. A sherife is also a judge, his power is judiciall ; and in such matters, he cannot execute his office by deputy, nor supply both these employments. Therefore the ordinance, forbidding his election, is according to law. That Sir Edward Coke himselfe made ordinances equall with acts of parlement ; and that it is a question, whether all acts were not so, in that time ^b.

To this it was answered, that cleerly there was a difference between an ordinance, and an act of parlement ; (wherof somewhat hath bin before noted ;) and this difference appears, in that an ordinance was enacted, from thenceforth, to be an act of parlement ^c. If this ordinance had the force of a law ; it was to no purpose to have any of the commons in parlement ; for this ordinance being made without them, as appears by the rolle ; if it were nevertheless a binding law, there would be no use of the commons in parlement. Butt the necessity of their assent, to lawes, hath bin already in part noted ; and, about the time of this ordinance : which, if it had bin a binding law ; how came it then to passe that lawyers, as well as sherifes, have not bin ever since excluded the parlement ; and comprehended, as well as sherifes, in the nolumus ? Which they have not bin ; nor, the sherifes themselves, in some times. Butt this point was left, as a cleer trueth : that neither this, nor any other ordinance, is the same thing with an act of parlement ; or hath the same force of law in it.

As to the sherife's residing in his countey ; the king doth usually dispence therewith : and the election of him, to be a knight of the

^b West. 2. c. 14. 2 H. 4. f. 2. 11 H. 4. f. 82. Stat. Merton. c. 3. 7 H. 7. f. 4. 12 H. 7. f. 5. 9 H. 4. f. 5. 9 E. 4. 31. ^c 2 R. 2. 28 E. 3. St. Staple.

shire, takes him off from that residence; and, by the old law, tyes him to an attendance upon the parlement.

Nor is his judiciall office, of a sherife, any more hinderance to his service in parlement; than the office of a justice of peace is, or of the judges att Westminster.

2. The second objection upon the “*nolumus*” was inforced, as being a clause, and words, of substance; not, of forme; and constantly used, and observed since 46 E. 3. That things long settled are not to be stirred. That there are divers precedents where sherifes, being elected parlement men, have bin refused to be admitted, and new elections ordered: as Sir Andrew Noel’s case, and Sir George Selbye’s case; the case of majors, of towns, and others^d.”

To this, was answered. That Sir Andrew Noel was chosen for the same countey, wherof he was sherife; and Sir George Selby was sherife of inheritance, in another countey. That as some sherifes have bin excluded; so others have bin admitted^e. And this ordinance, being no act of parlement; the “*nolumus*,” in pursuance of it, doth not bind as a law. And the longer it hath continued; the more injury hath bin done to the rights of the people, and to the priviledge of parlement: which cannot be bound, butt by a lawe to which themselves consent; and that was not had, either to this ordinance, or to the “*nolumus*.”

^d 4 Nov. 1602. 9 Apr. 12 Jac. Br. parl. 18 H. 8. 12 Jac. journ.

^e 39 El. 31 El. Sampole’s case, &c.

C H A P. CII

By any means be chosen.

BESIDES sherifes disabled, by this clause of the writ, to be chosen members of parlement; there be other officers, and persons disabled, by the lawe and custome of parlement, to be chosen members of the house of commons.

The judges of the king's bench, common pleas, and barons of the exchequer are disabled to serve in the house of commons; bicause they are assistants in the lords house. Those who are not residents in the countyes, and townes, are not to be chosen^a. An alien is disabled to serve; though he be made a denizen. Men attainted of treason, or felony, and outlawed persons, are disabled. A man deafe and dumbe, or blind, or an ideot, is disabled.

With the Jewes, the comelines of the person was much regarded. They were not admitted to a place in the sanhedrim, whose stature, countenance and demeanor was not comly; as he that was blind of both eyes, or of one eye, or deformed, or mayhemed, or an eunuch, of which somewhat hath bin, before, noted^b.

Whosoever is made a peere by the king; or, elected to serve in the house of commons by the people: yett may the respective

^a Co. 4. Instit. p. 47.—Stat. 1 H. 5. c. 1.

^b Gemar. Babilon. ad tit.

Menachoth, c. 6. f. 65. 1.—Gemar. Babilon. tit. sanh. c. 4. f. 36.

houses,

houses, uppon complaint of any crime in such person, and proove therof; adjudge him disabled to sitt as a member of that, or any other parlement °.

The Hebrewes, Gracians, Romans^d, and all nations, have bin very carefull not [to] admit unfitt persons, to be their senators, and, have exercised this judgement: that if any of them were notoriously vitious, unjust, and scandalous; they would remove them, as unworthy, and disabled to be, magistrates, or members of their publique councells. Those vices being hatefull to all persons of honor; and, distructive to all governments, and supreme councells in them.

° Journalls of either house.

^d Rosinus, de antiquitat. Roman. p. 278, 279.

C H A P. CIII

And that you certify.

THE "sherife must certify the king," of the elections made in his countey; and by this certificate, the persons who are to serve are certainly knowne; and so is, the certaine number of them.

And although the king may create as many as he please, to be members of the lords' house; and give, by pattent, to as many townes as he please, the priviledge of sending burgessees to the parlement; and so increase the number of the members of either house according to his owne pleasure. Yett, when he hath created those peers, the certaine number of all the peers must be knowne; as appears, by the rolles in chancery: and, after his graunting the priviledge to townes; the certaine number of all the members of the house of commons must appeare, by the certificates of the sherifes. Else it cannot be knowne who are trusted with the great power, of being members of that high court, and councell.

With the Hebrewes, the number of seaventy was had most in request, and veneration: which arose uppon that number of soules going with Jacob into Ægipt; and from the institution of the sanhedrim, where Moses was commaunded by God. "Gather unto me seaventy men," &c. The hebrewe is according to the forme of

of their speech, "seaventy man," for "70 men;" the singular number being taken by way of collective: as in other places, "a thousand man," for "a thousand men," and the like^a. There is no small variety of opinion, concerning the number of these elders. Many eminent men have published their opinion, that the number of them was 72; reckoning, besides the 70 mentioned in the text, Eldad and Modad, who remained in the campe, and prophesied: so they count them in all 72. Others say, they were 72 or 74. Others say, that they were 72; and so 6 taken out of every tribe: of which opinion we have the workes of fundry learned men, published; and, their reasons for it^b.

The like difference of opinion is about the number in Luke; "the Lord appointed other 70 also; and sent them two and two before his face, into every citty, and place, whither he would come^c." This number, some hold, was 72: though heere named butt 70. The like is conjectured of that number, in the text alluding to the 70 disciples sent abroad. "And they came to Elim, where were 12 welles of water and 70 palme trees^d." Expositors hold these 12 wells, to allude unto the 12 apostles; and the 70 palme trees, to the 70 disciples sent forth by Christ. And many authors contend, that this number was 72: and they alleadge the custome among the Hebrewes, to use a round number, for that which is more large. And they instance the 72 interpreters, which doubtles was the number of them; yett they are often in a round name called the 70. So Eutichius, patriarke of Alexandria, in his MS. saith: that Ptolomy sent to Jerusalem, to call 70 men of the Jewes

^a Numb. xi. 16. אֶלֶף אִישׁ — Jud. xv. 15. אֶסְבֵּה לִי שְׁבַעִים אִישׁ מִקְנֵי יִשְׂרָאֵל — mille hominem, for mille hominum.

^b Baronius. Spondanus. Lorinus. Serrarius. — Montague, analect. p. 228. Quistorpius. annot. Bib. Drusius. Grotius. Megethius. Eutropius. Adamantius. August. MS. in bibliothec. St. Jac. & Cott.

^c Luke x. 1.

^d Exod. xv. 27.

to Alexandria; and commaunded them to interpret to him the law, and the prophets, out of the hebrewe, into the greeke tongue^e.

The like is mentioned of the round expreffion of the centumviri of Rome; and the centumvirall judgements of causes, usuall with their authors^f. Ovid was one of them^g, and Lucan; and they expresse them, the court of the centumviri. Yett it is acknowledged, that the number of those called the centumviri was, att first, 105; and afterwards, 180; yett still called the centumviri. Att Rome, there were 35 tribes. Three out of every tribe were chosen to be judges; and, called the centumviri, although they were five more than 100^h, that they might be the more easly named. And this, in Rome, some resemble to that of the sanhedrim. Out of the 12 tribes of the Hebrewes, 6 were chosen of every tribe, which made the number of 72; butt for the roundnes of speech, they were called 70.

The cleerer, and more universall, opinion seemeth to be; that the number was butt 70, besides Moses the prince: and generally, the Talmudists are of this opinion, and the rabbinsⁱ. Nor is it a frivolous conceit, that 6 were taken out of each tribe, and two of them were left out by lot; as hath bin before noted. And though a lesser number be sometimes used, in the roundnesse of speech; yett it doth not theruppon follow, that it should be more than the first institution. It might as well be said, what Pliny relates of the 70 judges in Taprobana^k, who had cognifance after an appeale from the 30 rulers; that those 70 judges are to be understood 72, bicause

^e Josephus. August. de civitat. Dei. l. 18. c. 43. Easterne, and westerne authors.

^f Cicero de orator. Quintilian.

^g Ex ponto, l. 3. epist. 5.—Et firmare

jubet centeno judice causam.

^h Sixtus Pompeius.

ⁱ Commentators on

Nu. xi. & on Math. v. Martini. Porchetus. Galatinus. Petrus. Brutus. Mirandula. Bongus. Crinitus. Beza, &c.

^k Hist. nat. l. 6. c. 22.

that number is elsewhere so taken. They may as well take those 30 rulers for 32; which will hardly be admitted. Those, who would have the number of the elders to be 72, must then make the sanhedrim to consist of 73; Moses being added: butt that number is unheard of; as that of 71 is every where received. Where the offerings of the princes are recounted, att the dedication of the temple, it is said; that Nafhan offered one silver boule of 70 shekels, after the shekel of the sanctuary¹. No man will object this to denote 72 shekels; and as little is it to be doubted of the 70 elders.

Butt I may be judged to have spent too much time uppon this point. The reason, why the number of 70 was præscribed by God, is above our inquiry. It pleased him to commaund it: and there is also a speciall reason observed for it. That this being the number of soules that came into Ægipt with Jacob, as appears; of those 70 soules came 70 families, and of every one of those families one person, who excelled the rest, was chosen: and so out of the 70 families were 70 persons, who made the "assembly of elders"^m. And the Hebrewes, for this reason, honored that number of 70; to preserve the memory of God's goodnes, and promise to them, in the increase of Abraham's seed from so smalle a number, to so great, and numerous a people. Therefore in the latter end of Jacob's time, or shortly after his death, it is conceived, that they instituted that number of 70 elders in Ægipt; the which are mentioned in the texts. And Bertram holdes, that from these grounds, those families were so exactly numbred, and so often mentioned. And from those 70 families the chiefe rulers of the Hebrewes were taken; "who, to all ages of the world, should represent those 70 families of the Hebrewes unto posterity"ⁿ.

¹ Num. vii. 13.

^m Bertramus, de rep. Jud. c. 5. Grotius ad Acts. vii. 13.

—Gen. xlv. 27. Exod. ii. 5. Deut. x. 22. Bertramus, supr.—Seniorum cætum.

ⁿ Exod. iii. 16. & xxiv. 1. 9.—p. 53, 54. Qui septuaginta illas gentes Hebræorum posteris, in omnes mundi ætates, representarent.

The number of the councell, or conclave, of the cardinals of Rome comes up to this example. Pope John 8, writing to them concerning the determining of causes, saith: "As we are sure, that our meeknes hath a resemblance to Moses; so hath your fraternity, to the 70 elders who, under him, did judge the buisnes of causes^o." Another of them saith "that, as the figure of the old synagogue doth answer unto the trueth of the holy apostolique church; we being desirous to follow the commaund of God, given to Moses, to gather 70 men of the elders of Israel of the people, and masters, that they with him might beare the burden of the people, and that he might not beare it alone; uppon whome, being brought to the door of the tabernacle, (the Lord speaking,) the spirit rested: we, by the counsell of our said brethren, have established, and for ever ordained; that from henceforth reckoning all, the bishops, presbiter, and deacons cardinals, of every order which now are, or which shall heerafter be created, shall not att any time altogether exceed the number of 70; and that number, by any prætext, occasion or urgent cause whatsoever, shall not be increased^p."

It is noted of the athenian senate, that "the chiefe place, among the magistrates, was to the senate of 500 men." And in another place it is said; that "the Athenians used, under the name of nomothetes, to understand the senate of a thousand men^q."

It hath bin noted that Romulus, att the first foundation of the senate, chose 100 persons to be senators; whom Tarquinius Priscus made up 700; and Cæsar, 900^r.

^o Baronius, tom. 10. an. 882. § 8. Binnius, concil. tom. 3. pt. 1. 3. p. 94.

^p Pope Sixtus 5. constitut. an. 1586. Bullar, cherub. tom 2. in Sixt. 5. constit. 50.

^q Gothofred. l. 1. p. 699. Primus locus inter magistratus fuit senatui quingentum virorum. p. 700. Solebant Athenienses, sub nomothetarum nomine, intelligere mille viros.

^r Martin, Philetii, in Cic. Godwyn. Rosinus antiquit. l. 1. § 2.

The number of members in the German diette are reckoned, the 7 electors, about 60 bishops, about 40 princes, 12 abbots, 9 earles, 47 barons, and the deputies of 97 cittyes; in all about the number of 500 persons.

In the Swedes ricksdagh are 9 bishops, 7 superintendents, about 250 families of the greater and lesser nobility, about 160 proctors of the clergy, about 120 cittizens, and about 140 boores; the number, in all, doth amount unto about 700 members.

Butt the senate of Venice, for number, exceeds them all; there being reckoned about three thousand senators: and they may truly say, with the wise man, "in the multitude of counsellors there is safety;" having themselves flourished above 1300 years together.

It is not necessary, or practicable, to make an exact calculation of the certaine number of senators in the severall publique councells which now are, or have bin. It may suffice, that although the numbers of the members of publique councells are sometimes more, and sometimes fewer; and must vary according to occasions of absence, imployments, sickness, death and the like: yett the certainty who are intrusted with that great power, who are members of councells, and who are not, is "necessary to be certefyed, and certainly knowne;" that they be not personated by others; butt that it may be knowne who are invested with that high authority; and that they be obeyed accordingly.

• Pro. xi. 14.

C H A P. CIV

Without delay.

“**D**ELAY” is said to be the stepmother to buisnes; and commonly gives discontent, though att the length, dispatch be obtained. It is as bad, if not worse than a denyall. In private affayres, and in publique, it “carryes daunger^a.” ’Tis seldom that buisnes delayed comes to a good issue. The suitor feares, by delay, his buisnes will be lost: and sometimes the patron delays, fearing daunger in the doing of it. On each part delay is judged perilous.

Impatience is the companion of delay. And nothing brings more regret with it than delay; bicause it is fruitles: except in the case of a delinquent, where delay is gaine; according to that of Ovid,

“The least delay will be thy friend,

And bring great profit in the end^b.”

And so the italian proverbe is: “he that hath time hath life^c.” Butt, in publique affayres, delays prove often mischievous: and when the people had long expected Moses to come downe from the

^a Mora trahit periculum.

^b Differ, habent parvæ

Commoda magna moræ.

³ Fast.

^c Qui a tempo, a vita.

mount; and saw, that he delayed to come; they fell to idolatry, and made the molten calfe^d.

The Latines call delay “a staying, an expectation of time, a putting of, a dilation^e.”

Lucan adviseth,

When things are ready, take away
The constant dammage of delay^f.

In nothing is it more damage, than when publique affayres are retarded by an unnecessary delay; and therefore this writ commaundeth the sherife to certify, “without delay,” the names of the parlement men by him to be returned; for till they are knowne, no buisnes can proceede.

The best precedent against delayes is given by the psalmist, who saith, “I made hast, and delayed not to keep thy commaundements^g.” And in this case above all others, delayes are to be avoided.

^d Exod. xxxii. 1.

^e Mora, expectatio temporis, dilatio, cunctatio.

^f Tolle moras semper, nocuit differre paratis.

^g Psal. cxix. 60.

C H A P. CV

To us in our chancery.

TO note matters observable, in relation to the chancery, would take up another volume. I have bin unhappy in too much experience of those matters; and hold it best to acknowledge, that “plenty makes me want^a”; and since I have not scope to say what I could on this subject; I shall rather offend in saying too little; and reserve a full discourse, for a perticular tract on this argument.

That the chancery of England is “the shoppe of justice^b,” the fountaine of legall proces, and the court of equity to moderate the rigour of the common law, is in every student’s notes. I had rather informe others; than those of my owne profession, who understand these things better then I doe.

For the word “chancery, and chancellor,” and the derivations of it à cancellis, and other criticismes, the learned Sir Henry Spelman gives great satisfaction; with whome Lambard, Coke, and others doe agree: and they derive these words from the greeke word, which signifies to “make lettices,” grates, or crosse barres; as the chancellor doth, when he cancels a record^c.

^a Inopem me copia fecit.^b Officina justitiæ.^c Glossar. hoc verbo

Cancellarius. Lambard. archeion. p. 46. Co. 4. Instit. Καγκελῶ.

I shall speake briefly uppon three heads. 1. The antiquity; 2. the dignity; 3. the authority of this court of chancery, and of chancellors.

Doubtles the chancery is as antient, as any court of justice in England, as to fundry parts of it: and we find chancellors mentioned very antiently, amongst us.

The antient Saxons termed those, who prepared the king's charters, bocepar, notaries and scribes. So Ingulphus calles Bosa, the scribe of king Withlafius; and Swithulphus, bishop of London, is called notary of king Berthulphe^d: who were the same with chancellors. The which word was also used afterwards: as king Athelstane saith, he made his charter to Malmesbury, "by the counsell of master Wolfin his chancellor^e." And Turketulus was chancellor to the same king^f, and to Edmond, and Edred; and to their father Edward the elder. Also Adulphus was chancellor to king Edgar; Alfius, to Ethelred; Leofric, Wolfinus, and Reimbaldus, to Edward the confessor. Polydore affirmes, that W. 1. instituted a colledge of scribes, and called the master of them a chancellor: butt this is not the first of his mistakes. That we had chancellors before, is evident.

The fower high courts att Westminster, the chancery, king's bench, common pleas, and exchequer, are all of equall antiquity; and no man can certainly affirme the time of the beginning of them. Our antiquaries affirme^g, that both the chancery, and king's bench, were antiently one court; which followed the king's person whithersoever he went, to be ready to advise him, in matters both of law and equity. And in the king's house there was a

^d An. 851.

^f Ingulphus.

^e Per consilium magistri Wolfini, cancellarii sui.

^g Cambden.—Lambart.

place for the chancellor, and his clerkes; and for the judges; and there was also the exchequer: wheruppon they were called the lawyers of the pallace, and the court lawyers^h.

In one of our bookes of law, it is reported, that in the king's bench, a record shall be received from the chancery without a mittimus; bicause, (saith the booke,) those two places are butt as one placeⁱ. And the antiquity of these courts is doubtles very high, and hardly to be traced to a certaine time of commencement.

In a finalle tract of the office of lord chancellor, fathered uppon the lord Ellesmere, it is said; that before the monarchy of the Hebrewes, a speciall priviledge of jurisdiction in difficult matters was reserved to Moses^k. If it were reserved to Moses, it could not be before the monarchy of the Hebrewes; for Moses was an absolute monarche over them. The lord Ellesmere goes on. Wherin (saith he) Moses might demeane his decrees, according to the information of his good conscience. For so it may be understood, if I be not deceived, (saith our chancellor;) that in those cases, he asked counsell of God, who gave him warrant of his authority: and therefore some have not feared to call him "God's chancellor^l." So by the poets it was fained, that Minos was chancellor unto Jupiter^m.

Joseph is said to have bin Pharaoh's chancellorⁿ. And in that place where Jehosaphat is called the recordor; the hebrew worde is "a remembrancer," and one that keepes memorialls; so the vulgar latin renders it, à commentariis. The greeke is the same; and the syriack, and arabick, is "commemorator." The chalde

^h Gotzelinus, in vit. Sti. Edwardi. Jo. of Salisbury.

ⁱ 10 E. 3. 403. b. 62.

^k Observations concerning the office of the lord chancellor, published 1651.

^l Cancellarium Dei.

^m Cicero Tusc. l. 2.

ⁿ 2 Sam. viii. 16,

is "chiefe over the records," the proper office of the chancellor: and the spanish version gives him the name of "chanciller."

We read also, in the time of Artaxerxes, of Rehum the chancellor°. With the Athenians, Solon is said to be a kind of chancellor; bicause he mitigated the rigor of Dracoe's lawes: and the nomothetæ were a kind of chancellors. And Plutarch writes of Eumenes Cardianus, that he was "archigrammateus of Alexander the great; commonly called chancellor, and prince of the scribes^p."

Some fetch this office, and officer, from the Athenians; others, from the Amphictyones: and others, from the antient times of the Roman empire, in which we find this mention of them; that "he made one of his chancellors governour of the citty." Afterwards, there is mention of a chancellor by Cassiodore; and in that time it seemeth there was a chancellor in each province^q.

Under Charles the great this officer flourished; and under Lodowick, the emperors: and the office of the comes palatii resolved much into that of the chancellor^r.

This office was also, from the pallace of the emperor, brought into the consistory of the church, "in an age that is uncertaine, butt very antient; and att length, this magistracy was brought into the courts of all the princes of Europe^s."

° Ezra, iv. 8, 9, 17.

^p Archigrammatea Alexandri magni, vulgo cancellarium, ac principem scribarum.

^q Flavius Vopiscus, in carino, an. 287.

Præfectum urbi, unum ex cancellariis suis, fecit. Variar. l. 11. formul. 6. & l. 12. formul. 1.

^r Hincmar. epist. 3. c. 16.

^s Spelman. glossar. hoc

verbo. Ævo quidem incerto, sed antiquo. Transiit denique hic magistratus in aulas omnium principum Europæorum.

France had it very antient; so had Spayne, and the princes of Italy; and in Germany, Poland, Sweden, Denmarke, Bohemia: and scarce any kingdome is without this office, and officer, of very antient date.

For the dignity therof, the chancellor, with us, is said to be "the first after the king; and second, in order," of any temporall magistrate'. As Joseph was stiled father of the countrey; and only in the throne, was the king greater than he".

Turketulus, chancellor to king Edward senior, is stiled by Ingulphus "the first counsellor, the chiefe, and most intimate in his secret counfells". After this great chancellor, who was eminent both for warre and peace; the succeeding chancellors were not of so great note for a time; butt in their degree as ecclesiasticall persons, and the king's chaplains, who were usually placed before the nobility. Under H. 2. the chancellor "is saide to reigne, together with the king"; and under R. 1. William Longechamp, the chancellor, solely managed all things in the kingdome.

"His dignity is, that he is accounted in the kingdome, the next unto the king'." The court of equity is not held a court of record; butt "excelles the courts of record"; the beginnings wherof are incertain, butt the groweth was to a vast greatnes.

By an act of parlement in H. 8. time, entitled "an act for placing of the lords"; amongst the rest the lord chancellor, being

* Primus post regem; et secundus in ordine.

" Gen. xli. 40.

" Ingulphus. Consiliarium primum, præcipuum, et à secretis familiarissimum.

* Gulielm. Nubr. rer. Anglican. l. 2. c. 16. Conregnare dicitur Thomas Cancellarius.

† Cancellarii dignitas est, ut secundus à rege in regno habeatur.

² Præpollet tamen ipsas.

³ 31 H. 8. rot. parl. n. 10.

a baron, is placed uppermost, on the left side of the parlement chamber ; before all dukes, except the king's sons, brothers, uncles, nephews, &c. so great dignity then was, and still is, given to this great officer.

And if Moses were God's chancellor, (as the lord Ellesmere notes ;) there could hardly be an officer of higher dignity. Nor could more dignity well be given to a chancellor, than that which Pharaoh deservedly gave to Joseph ; before whome they cryed, " bow the knee ;" or they called him, " father of the king ^b." Jehosaphat, by us translated " recorder," and by the Spanyards " chanciller," is ranked with Joab the generall of the army.

Those, among the Græcians, to whome this officer is likened, were the principall magistrates in their commonwealths.

In the old empire, the chancellor is called " the chiefe, and who was president over the rest of the great officers ^c ;" and had great state, and pompe, in the provinces. He performed, in effect, the office of prætor, which was of great dignity : and came att length to that height, " that he was viccar of the present prince ; and he being gone abroad, he was in a sort his vice roy ^d."

Budæus calls him " præfectum prætorio ;" and that he was sometimes in the place of the dictator.

Tribonianus is accounted to have bin chancellor to Justinian ; Seneca, to Nero ; and Ulpian, to Alexander the pope : and these were men of great dignity, in their times.

^b Gen. xli. 43.

^c Vides quantus olim in imperio cancellarius ; summus

nempè, et qui cæteris præfectus.

^d Ut principis presentis vicarius ; et, co

peregè profecto, interrex quodammodo censendus.

The archbishop of Mentz one of the electors, a great prince, is chancellor of the empire.

The chancery, and chancellor, of France, (as the lord Ellesmere notes,) cometh neereſt to ourſelves; and much reſembleth the forme, and force, of our Engliſh chancery. The chancellor is ſtiled “the higheſt of all orders and honors;” and he is called the “nomophylacius,” a græcian officer of great dignity^e.

“Antiently,” in the great counſells in France, “the chancellor was the preſident;” and ſummoned, by order, the counſellors. He ſate with the peers, and was acknowledged “for the generall head of the juſtice;” and was neereſt to the perſon of the king^f.

The dignity of the office appears by his ſalary, which is 18000 liuers per annum, certaine elles of velvet, a certain number of lights, and an allowance of waxe; and att the king's entry into townes, a garment of cloth of gold. And great priviledges belonged to his office.

Of the like dignity are the chancellors in Spaine, Italy, Poland, and other kingdomes.

In Sweden the chancellor is the fowerth ricks officer; the chiefe juſtice, the felthere, and the admirall are before him: but his place is of greater power, and dignity, with them.

The 3d perticular is the authority of the chancery and chancellor; the which was antiently imployed in taking care of the king's charters, and the ſealing of them. Which uſe of ſealing of char-

^e Divus Lucius. Supremus omnium ordinum, et honorum, cancellarius.

^f Pasquier, Recherches, p. 79. pour le commencement, preſidoit le chancelier, en ce grand conſeil. ib. p. 99. Pour chef generall de la juſtice. ib. p. 103.

ters some affirme to have bin brought in by the Normans ; or att first, by Edward the confessor out of Normandy. Butt the mistake heerof, is noted elsewhere ; and that, before Edward the confessor's time, we find the use of seals by king Cnute, Edgar, Ina, Alured, Athelstane, and others : some originals of which seals, I have seene ; and not probable, nor to any end of advantage, to be counterfeit. And as to the opinion of Polydore, it will not sway much to the contrary.

King Athelstane is said to have made a charter, “ by the counsell of master Wolfinus, his chancellor^s.” And to this day all the charters, commissions, and graunts of the king, are framed in the chancery ; and under the care of the chancellor who, by warrant from the king, is to seale them : and may, if he judge fitt, stoppe the passing of any of them, untill he acquaint the king with his objections against them ; and know the king's further pleasure about them.

In the chancery also are framed the writs, and legall proces, and sealed by the chancellor ; wheruppon it hath the name of “ the office, or shop, of justice.”

Ingulphus describes the authority of Turketulus, the chancellor, to be : that whatsoever affayres attended the king's judgement, whether temporall or spirituall, they were all handled by his judgement, and decree ; (of so religious faith, and so profound wisdome, was he esteemed ;) and being ordered by the chancellor, were not to be undone.

He had antiently the custody of one part of the king's seale ; the king's chappell was in his disposall, and care ; arch bishopricks,

^s Per consilium magistri Wolfini, cancellarii sui.

bishopricks, abbyes, and baronies, vacant, and falling into the king's hands, were taken and conferved by him; he sate in all the king's counsell, though uncalled; and if he pleased might dye an archbishop, or bishop. In the exchequer also no great matter was done without his counsell, and consent^b.

The learned glossary divides the authority into three parts¹.

1. The colledge of scribes, of whome he is master, and where legall proces and instruments are framed, and writs for the beginning of law suits.

2. Is [for] the common law causes, about inquisitions and offices, and severall matters by virtue of acts of parlement, and concerning officers of the court.

3. Is for matters of equity; where the rigor of the common law is moderated. In all these the chancellor is chiefe in the colledge, the principall minister. In the common law causes, he is the judge, bound up by rule: and in matters of equity, he is the honorable arbitrator, appointed, and removed, by the king att his pleasure. Yett in H. 3. time the barons claymed it to belong to the parlement, to choose the chancellor, and other great officers^k. And theruppon it was, that Ralphe Nevill bishop of Ely, and chancellor; when the king, being offended, did demaund the seale of him; he refused to give it up, affirming: that as he had received it by the common consent of the nobility; so he would not, without like warrant, resigne the same.

The beginning of the authority of this court, in matters of equity, is not certainly agreed uppon. Lambert, Spelman, Coke

^b Gervas. Tilleber. par. 1. c. 5.

¹ Spelmanni, hoc verbo cancellarius.

^k Math. Paris. hist. Angl.

and the lord Ellesmere, (if the two last may be putt together,) seeme in this to agree, with others; that the justice of the kingdome belongs only to the king, to see it administred. Butt being impossible for him to doe it, in his owne person; he appointes delegates, and gives them the rules of law to limit their proceedings; which, in some cases, proving very rigorous; and some causes being full of difficulty, and not within the ordinary rules; recourse was had to the king, the fountaine of justice. Butt christian princes being mindfull of humane frailty; and desiring to doe cleere right, to all men: they tooke to counsell their court, that is, their nobles and barons; which course was observed throughout all Europe. And our kings antiently swore, that they would doe right judgement in their kingdome, by the counsell of their nobles¹: and this was pursued, by them, in their pallaces. Butt the multitude, and burden, of causes increasing; they erected severall courts, for the determining of them: butt the weightier matters were to be brought to the king's pallace, to be judged by him, and his nobles. Whence in E. 1. time, it was enacted^m; that the chancellor and justices of his bench, shall follow him: so that he may have att all times, neere unto him, some that be learned in the lawes; which be able duely to order all such matters as shall come unto the court, att all times, when need shall require. The judges were for matters of law; and the chancellor, (who commonly was an ecclesiasticall person,) for matters of equity, and good conscience. Butt some of our kings, being imbroyled in troubles and warres, and some going beyond the seas, were forced to leave these affayres to their counsell; and chiefly, to the chancellor, a man commonly of great prudence, neere to the king, and experienced in affayres. And this brought all the rest of the magistrates to have a subordination to him; who became the oracle of equity,

¹ Leges Edouardi confessoris, c. 16.

^m Articuli super chartas, c. 45.

the storehouse, (as the lord Ellesmere styles him,) of the favour of justice, of the liberality royall, and of the right prætoriall; which openeth the way to right, giveth power and commission to the judges, hath jurisdiction to correct the rigour of law, by the judgement and discretion of equity and grace. It is the refuge of the poore, and afflicted; the altar, and sanctuary for such as, against the might of rich men, and the countenance of great men, cannot maintaine the goodnes of their cause, and trueth of their title.

I shall not impeach this encomium, bicause the author was a chancellor; nor insert my notes uppon it, (though I have had too much experience of this authority :) bicause I then should be enforced too much to inlarge my selfe. Butt I shall only propound this caution: to keep within the bounds of that description, and not to ingrosse too many perticular causes in that court; least it prove a mischiefe to the subject, and a bane to the authority.

The certificate made to king James^a, that this authority hath bin used since the beginning of H. 7. time; was a good ground of his confirmation of it. Butt it seemes to have bin exercised before that time, when the civill warres between the houses of Yorke, and Lancaster, and the troubles and changes of those times, caused most men to putt their estates into the hands of trustees; whose breach of trust could no where be remedied butt by this authority; and which caused the increase of buisnes in this court. And had they not exercised this authority, in H. 6. time^o; there had bin no occasion of that law, that none should pursue any matter in the chancery; without the testimony of two judges, that the same was not remediable att the common law. Nor, of that order in H. 4. time^p; that the king's officers shall proceed sparingly

^a 18 Julii. 1616.
rot. parl. n. 78.

^o 1 H. 6. rot. parl. n. 41.

^p 4 H. 4.

uppon suggestions. Nor, of the statute^a giving dammages uppon untrue suggestions in chancery. And then to no purpose had those severall statutes bin made, which the lord Ellesmere mentions in E. 3. time; by which, authority is given to the chancellor, in perticular cases: if his authority began in them butt in H. 7. time; or, as some inlarge it, in 36 E. 3.

In Richard 2.^r time power is given, by parlement, to the chancellor, and chancery; and rules for their proceedings: wherby it seemes, in that time they had authority, and jurisdiction, between party, and party.

In E. 3. time^s, are fundry proceedings in chancery; as particularly touching fraude, and dureffe, and the like; more particularly, uppon the oppressions of the Despencers. And when the parlement referred matters to the chancellor; many times the treasurer, and others, were associated to him in E. 3. time: and often also, they were [referred] to him alone^t.

A principall buisnes of the chancery, and chancellor, is the care, and charge, of that great treasury the records, which are the most exact history of the kingdome; containing memorialls of all passages of moment, both forein and domestique. There were inrolled all treaties, leagues, alliances, and forein negociations; all instructions, and commissions, to ambassadors, and publique ministers; all commaunds, graunts, summons, and acts of parlement; and generally, all the publique, and great, actions of the state. Wheruppon the chancellor may well be stiled à commentariis, commemorator, "recordor;" and as the chaldee hath it, "chiefe over the moniments^u," the publique recordes, of the nation.

^a 17 R. 2. c. 6.

n. 31. 1 E. 3. rot. parl.

36 E. 3. &c.

^r 17 R. 2. rot. parl. n. 52.

^t 1 E. 3. Winfor. 20 E. 3. stat. 39 E. 3.

^u Præfectus super monimenta.

^s 15 E. 3. rot. parl.

The cognifance of the prætor, in Rome, was either domefticall, or popular: domefticall, wherby he might heare the complaints of every private man, within his pallace, and in his owne chamber; and order them by the law of his reafon; which orders were ingroffed by one of his clerkes, and fealed, and then binding.

The viſcount of St. Alban's notes; that our chancellor's office hath great affinity to that of the roman prætor^w: and whoſoever confiders the parts of the prætor's power, will be of the ſame opinion. His power to heare complaints in his houſe; to order them, according to the law of his reafon; his orders to be ingroffed by one of his clerkes, or registers, and fealed; are all the ſame with the authority of the chancellor of England.

So was the prætor's popular power, when he ſate in basilica, or in foro; as our chancellor doth in Weſtminſter hall. The prætor had attendant uppon him ſcribes, cryers, ſerjants; and this was called, "the place of decreeing^x:" in whoſe conſtitutions, there were two kindes; one of decreeing, another of giving judgement. He was ſaid to decree; when, without the advice of the judge, he would manumitt, emancipate, award, poſſeſſion of lands, or goods; commit wardſhip of pupils; graunt injunctions; and generally when, without aſſiſtance of a judge, he did holde cognifance of cauſes, and determine therof as he thought good. And in this manner of cognifance, he would ſometimes "make decrees without the judge;" ſometimes he would "diſmiſſe the cauſe, to be determined by the ordinary judges^y." Sometimes he judged according to the rules of the law, the law of the 12 tables, the plebiſcita or ſenatus conſulta; in other caſes, he judged according to

^w Hiſt. of H. 7.

^x Locus ſtatuendi.

^y Statuere ſine judice—

Rem judicibus ſtatuendam permittere.

his owne reason. Att the entry into his office he would publish certain edicts, as principles, out of which he would derive his decrees; like the rules of equity, published by some of our chancellors.

I shall note butt one instance of their prætorian law, out of Cicero. "Who sees not, (saith he,) that one is not to stand to those promises which he made either by compulsion of dureffe, or being circumvented by fraud: which for the most part are discharged by the prætorian right; and some of them, by the known lawes^z." This is in force with us att this day, in our chancery; which gives remedy in these very cases, and dischargeth promises so made.

The chancellor of the empire hath, in effect, the same authority as our chancellor hath; as to commissions, graunts, legall proces, and the care of the publique records.

The like hath the chancellor of Sweden; and in the chancery there are inrolled all forein transactions, proces of lawe, creations of the nobility, graunts of the king, patents to officers, summons of publique counsellors, and their acts: and in effect, the very same powers, and authorities, which we find exercised by our chancellors; before the judging of private causes was so generally assumed by them.

The chancery, and chancellor, in Spayne, Italy, Poland and other kingdomes, have the like authority with our chancellor; especially, in France. And I shall conclude this argument with a note of the customary of Normandy, which saith: that "in magistrates, the

^z Offic. l. i. f. 7. b. Jam illis promissis non esse standum, quis non videt, quæ coactus quis metu, aut deceptus dolo promiserit: quæ quidem plerumque jure prætorio liberantur; nonnulla, legibus.

gouvernement communicated is not free, butt subject to the rules of law; though the cause be committed to him in conscience: bicause that is to be understood, a conscience armed with law^a;" not, that which one builds to himselfe. Butt he must follow the conscience of the publique lawes; not, his peculiar conscience.

^a Grand coustumier de Normandie, f. 4. b. glos. In magistratibus, imperium communicatum non est liberum, sed regulis juris subiectum; etiamsi causa ei esset commissa in conscientia: quia tunc intelligetur, de conscientia legibus munita.

C. H. A. P. CVI

Att the said day, and place.

ALL the said knights, cittizens, and burgeffes, are to meet “att the said day and place.” And to the end it may be knowne whome the severall counties, citties, and boroughs, have elected; and impowred according to this writ, to serve for them in parlement: therefore the sherife is to send in his returne, “att the said day and place.” And the full appearance of the members of parlement is held so necessary; that when some of them have failed to be “att the said day and place:” the parlement hath, for that cause, bin adjourned to another day; and new summons awarded, for those who were then absent^a. Sometimes the house hath bin called, and the names of those absent examined, before the king; that such as made default might abide the king’s order. Sometimes, bicause certain sherifes had not returned their writs; the parlement was adjourned. Sometimes, fines have bin imposed, for not being present “att the day, and place” appointed; wherof there are precedents; and, of the adjournement of the parlement, for absence of the members^b. In the beginning of the parlement rolles, of very many of them constantly unto this day, att the first

^a 6 E. 3. rot. parl. n. 7. 18 E. 3. ib. n. 5.^b 5 R. 2. rot. parl. n. 1.

6 R. 2. n. 1. 31 H. 6. rot. parl. n. 5.

meeting of the parlement, the members are called by name; and the appearance of every one of them is recorded. The king usually creates some great person lord high steward, for that day, and for that purpose; and he makes his deputies, who sitt to receive the appearance of the members of the house of commons. And att this day, the appearance is not smalle, as it hath bin in times of trouble.

C H A P. CVII

Distinctly and openly.

THE returne of the sherife is to be “distinctly, and openly” made: “distinctly,” that it may be seene who are chosen for the countey, and who, for each distinct citty, and borough; and the returne is to be open, that the names may be known, and whether the persons chosen be returned, or not. That if they, who are duely chosen, be not duely returned; they may prosecute the remedy given them by lawe, for that injury. And it is necessary, that the returne be open: bicause, uppon complaint made to the parlement of a false returne; the house of commons doth often send to the clerke of the crowne, in chancery, to bring the returne of a countey, or citty, (as there is occasion,) to the house; where it is sometimes perused att the barre, or att the committee of priviledges; and being found to be false, or mistaken, the house many times causeth the returne to be amended att the barre, sitting the house; and then it is a record according to that amendment. The having of it “openly” doth also agree with the law of England, in other cases; that records are to be open, for all to search, and view; for all are concerned in them. And it is to be “open;” bicause it is to be tryed only by itselfe^a: and they admit no averment, plea, or prooffe, to the contrary. Our bookes of law are full of matter, and of many cases, and resolutions, touching matters of record, of which this returne of the sherife is part; and hath the priviledge, for the consequence of it, to be reckoned amongst our records of parlement.

^a Coke on Litt. f. 117. b. & 260. a.

C H A P. CVIII

Under your seale.

THERE hath bin much dispute touching the antiquity of seales. Some allow their beginning to be used heere in Will. the 1. time; and brought in by the Normans; wherof they bring Ingulphus for testimony. "That the usage in England to confirme the making of writings with golden crosses, and other holy signatures, was changed by the Normans to the impressi^on of waxe^a;" and they had their seales. Butt Coke, in his coment uppon Littleton, affirmeth, that sealing of charters, and deeds, is much more antient then some, (out of error,) have imagined: for, (saith he), the charter of king Edwin is thus testified. "I Edwin, king of all the brittish land, have confirmed my guift with my proper seale:" and then followes this subscription. "I Elfwin, divine overseer of the church of Winchester, have imprinted my proper seale^b." Which sheweth the use of seales in that time. And the charter of king Offa, wherby he gave Peter pence, doth yett remaine under seale. In the conclusion of the charter of Edward the confessor, to the abbey of Westminster, it is sayd: "I

^a Ingulphus hist. f. 52. Normanni chirographorum confecti^o nem cum crucibus aureis, et aliis signaculis sacris, in Anglia firmari solitam, in ceræ impressi^o nem mutavit.

^b Co. sur Litt. p. 7. a.—An. 956. Ego Edwinus, gratia Dei totius Brittanicæ telluris rex, meum donum proprio sigillo confirmavi. Ego Elfwinus, Winton. ecclesiæ divinus speculator, proprium sigillum impressi.

have commaunded this charter to be sealed; and I have imprinted the signe of the crosse with my owne proper hand^c. Which shoves, that they accounted that impressiō of the crosse to be a sealing.

All agree, that the Saxons used the impressiō of crosses instead of sealing: and that, from the infancy of the Norman empire heere, they used seales as att this day; and that not improbable to be introduced by them.

Of the same opinion is Lambart, and he cites another manner of sealing, when king Edward gave to Norman the hunter;

The hop, and the top towne;
With all the bounds, upside downe.
And in wittnes, that this is sooth;
I bite the waxe with my fonge tooth^d.

And he mentions another sealing, by Alberic de Veer, uppon a graunt of Hatfield: to which he affixed a short blacke hafted knife, like unto an old whittle; and that in stead of a seale.

The use of seales, with the Hebrewes, was very antient; for which that text is cited. "And thou shalt make holy garments for Aaron thy brother, for glory, and for beauty." Holy garments is there from the hebrew word, which signifies "the engraving of a seale^e;" and therby the antient use of them appears. This also appears from that expressiō of Moses: "Is not this layd up in store with me; and sealed up among my treasures?" Jesabel's

^c Lambart, Archeion. p. 60. Chartam istam sigillari jussi; et ipse, manu mea propria signum X crucis impressi.

^d Perambulation of Kent, f. 319.

^e Exod. xxviii. 11. — Marmora Arundel. p. 154. פתוחי הדם

letters were sealed with Ahab's seale: and Nehemiah mentions the covenant, to which the princes, levites, and priests did seale; and he reckons those in perticular, who did seale. So Job, speaking of the leviathan, saith; "his scales are shut up together, as with a close seale." There are very many texts, easily to be found, mentioning seales, and sealing perticularly of instruments and deedes; as that formerly noted, of Jeremiah's purchase, "I sealed the evidences:" butt I shall omit the recitall of them^f.

Raguel is said to write an instrument of covenants upon the marriage of his daughter to Tobias; and sealed it^g. And of their sealing of writings we have some testimony even in our owne records, as where a tryall was, touching a deed, by fixe english men, and fixe Jewes of Norwich; and found to be the deed of one Gentz, a woman Jew of Gloucester. The seale they called **חתם**; and the deed or instrument **sepher**; and the rabbins say **shetar**, and **fetar**^h; whence the worde "starre, and starrum," for acquittances and written deedes of contracts, is used. So in the case, cited before out of our records, "Solomon de Stanford, the Jew, acknowledgeth by his starre," &cⁱ. that is his deed. And in the receipt of the treasury are yett to be seen very many deedes of Jewes, to Englishmen, written in the hebrew; and with seales affixed to them. And many also are in private hands, wherof one, for variety may be admitted to be recited; and it is a deed of exchange of lands in Empingham, by Thomas Chaplein of Empingham, to one Ralphe of Empingham in lieu of other lands; to the seale of which is fixed, with a labell, a little starre: and the deed of the Jew, in hebrew, is to this effect. "Know all men, that

^f Deut. xxxii. 34. ⁱ Ki. xxi. 8. Neh. ix. 38. Neh. x. 1. Job xli. 15.—
 Jer. xxxii. 10. ^g Tobit. vii. 14. ^h 9 E. 1. rot. Judæor. 4. Pasch.
 Norf. & rot. 5. dors. & rot. 6. Suff. &c.—**שטר—שטר** ⁱ Solomon de
 Stanford, Judæus, recognoscit per starrum suum, &c.

the chaplein of Normavill stands discharged, both he and his heirs, from me and my heirs; of all debts, and of all suits which have had their ground or occasion from the beginning of the world, to the coronation day of the fifteenth year of the king that is ordained over us, king Henry; whom God preserve. And what I have determined, I have written and signed. Mamio Ben-David^k."

That there was a frequent and antient use of seales in Syria, and the easterne countries, is likewise manifest: though Pliny writes, that they were disused chiefly in "the east, and in Ægypt, being contented with letters only^l." Yett Menander affirmes, that the antient Persians did use seales. And the city of Magnesia, and of Smyrna had, in the most antient times, (as generally later corporations have,) a common seale of their cities. And Selden showed the translation of a league, out of greeke, in the time of Seleucus, which had a seale to it sealed with a seale ring^m. Butt it's affirmed, among the Græcians, that before the invention of seales cutt in fitt matter, the use was to seale "with pieces of wood, eaten and gnawen by wormes;" which could not butt give impressiō. And that Hercules first used that kind of seale; whence Lycophron hath, "a worme eaten sealeⁿ." Butt we are admonished not to be too prodigall of our faith in these græcian conjectures. The antient, and frequent, use of seales among them, is very evident: as also, amongst the Romans, who had "their seale rings," as Vopiscus termes them; and Juvenall mentions them^o. And as with us, so there antiently

^k יודע לכל שצולך מינורמאביל

Ægyptus; etiam nunc literis contenta solis.

^l L. 23. c. 1. Non signat oriens, aut

^m P. 296. excerpta de legat.—

Selden. in Marmor. Oxon. p. 1559. vol. 2. edit. 1726. (M) Commune Magnetum suum habebat sigillum. Ita etiam Smyrnæorum civitas.

ⁿ Hesychius, &

Philostephanus apud eundem, in *ῥρωτόβρωτος*. *ξύλοις, ὑπὸ θριπῶν, βεβρωμένοις, &c.*—

Jo. Tzetze; ad Lycophron. *ῥρωτόβρωτος σφραγίς*.

^o Annuli signatorii, & sigillarii. Satyr. 13.

was the chiefe use of rings for sealing. Theruppon is that of Capito, that the antients did not weare rings for ornament, butt bicause of sealing; and it was an ensigne of honor, in their antient state. That sealing of deeds, and instruments, was used by them, appears by that phrase of letters, and instruments, which were called *figillatæ*, from being sealed ^p.

In the same manner, and to the same purpose, were seales antiently used in Germany, France, Italy, Spayne, Sweden, Denmarke, Poland; and in most of the countreyes who had administration of civill government. And theruppon it might come, that the word for a seale is so universally the same, in the languages of those kingdomes. Where the Latines say *figillum*, the german is, *fiegell*, the low dutch, *feghel*, the french is *feel*, and *sceau*; the italian sayes *figillo*, the spanish *fello*, the swedish and danish say *fegler*. And there needs not much labour to recount the generall use of sealing, in each countrey; and almost in every great towne; and with every publique officer; where they have proper, and peculiar seales, belonging to them.

It is very requisite that such an officer, as our sherife is, should have a seale belonging to his office; (as all courts of justice att this day have;) and is the king's seale, although used by the judges. And so it is att this day in Wales; although not long since the judges used their owne seales there, in some proces; butt antiently, they used also the king's seale ^q. And att this day the bishops, and corporations, use their peculiar seales.

^p V. tit. de ord. test. digest. Cod. & Instit. Apud Macrobius, saturnalis. 7. c. 13. Lips. ad Tacit. annal. 2. § 4.

^q 13 E. 3. rot. claus. m. 5. dors.

C H A P. CIX

And the seales of those.

THE seales of the electors must be affixed to the indenture of returne; as well as the seale of the sherife. And it is not perhappes necessary for every one of them to have a severall, and distinct seale; butt one seale will serve for many, as our booke case is^a. Although twenty be named in a deed; if it be sealed by one seale, yett it is a good deed. And accordingly is the resolution in my MS. report of king Charles I. that one may seale with the seale of another person; and that the same is valid, as if he had sealed with his owne proper seale^b.

There be many cases in our law, where the seale of the sherife, and the seales of others, are to be affixed to returnes, as in this case of returne of the election of parlement men; to the end, the king may have the fuller and more ample testimony, and certificate, who are the persons chosē. The like is uppon inquisitions taken by the sherife, with a jury. And our Littleton instructs us, that uppon a writ of partition executed; the sherife must give notice to the justices under his seale, and the seales of the twelve, &c^c. that

^a 8 H 4. f. 8.^b H. 9. c. 1. in B. R. f. 220.^c Sect. 249.

is, the jurors : for so the writ commaunds, “ under your seale, and the seales of those by whose oath the partition shall be made.”

The like is done in many cases att this day, and the reason is, that there may be the fuller, and cleerer testimony, of the act done : and that, both by the legall officer, who is intrusted to see the same done ; and, by the freeholders, or jurors, who are a kind of judges, and principall actors in the buisnes.

C H A P. CX

Present at the choyce.

A Question may, uppon this occasion, receive a little debate; whither such persons as are “present att the choyce,” some wherof are men butt of an inferiour ranke, and condition; whither inferiour persons may make use of seales, and have the right, and priviledge therof perteining to them? Those, who object against it, mention that passage of the sealing of a charter of confirmation, made by Richard earle of Chester under H. 1. and the countesse dowager his mother, to the abbey of Abingdon; in the old lieger of which abbey it is sayd, that the earle sealed it with his mother’s seale: and the reason is given; for “he was not yett girt with the military belt. And that all the letters, directed by him, were inclosed with his mother’s seale^a.” From whence they inferre, that the right of using a seale was peculiar to them who had received knighthood; and to none under that degree. Butt, whatever the meaning of this may be; by the words of Ingulphus, the use of seales in England was promiscuous, to persons of all qualityes, that would use them^b: and that immediately after the comming of the Normans. His words are before noted; which alloweth all men the use of seales, att that time of W. 1. That

^a MS. Nondum enim militari balteo cinctus est literæ quælibet ab eo directæ materno sigillo includebantur.

^b 2 Tit. hon. Seld. p. 785. Ingulphus, p. 901.

of the earle of Chester is only a note of a monke, after the entry of the charter; and no parte of the body of the charter: and there is no other testimony to second it. The reason that he was not yett a knight, might be ment, that he was under age; and so used his mother's seale without difference, bicause perhaps, after the order received, some change was to be added to his. As Tillet cites a judgement, in Burgundy; that "when one tooke the order of knighthood, he is said to alter his seale".

Another testimony, against the generall use of seales, is also from a monkish report touching Richard Lucy, chiefe justice of England, his finding fault with a mean man for using a seale, under H. 2^d. It may be that fault might be justly found with one, for using another's seale without his consent, (which was held as a forgery;) or for using a seale of armes proper only to a gentleman. Butt the promiscuous use of seales, in this king H. 2. time, was a knowne lawe; as is testified in that of our lawe booke Glanvill. "If the debtor doth not avow his deed; the creditor, by two wayes, may goe against it or contradict it: to witt, the seale it selfe, in court, to be acknowledged to be his owne," &c^e. Which sheweth, that every man might then use a seale.

Braeton, under H. 3. makes the sealing, an essentiall parte of every deed. And gentlemen had their greater, and their lesser seales: the lesser they used for the sealing of all ordinary deeds, and writings. According to that sealing of deeds, among the

^c An. 1376. Dicitur, cum equestrem ordinem suscipit, sigillum mutare.

^d Chron. abb. de Bello. apud G. Lambard. in itin. Cant. p. 405.

^e Glanvill. l. 10. c. 2. Si debitor chartam suam non advocat, duobus modis eadem contraire, vel contradicere, creditor potest; scilicet ipsum sigillum, in curia, recognoscendum suum esse, &c.

Hebrewes, before noted; which proveth also the generall, and promiscuous, use of seales with them^f.

The antients had the like generall use of them. Judah the son of Jacob had his signet: and there is mention of ingravings of a signet, in Aaron's time; and they occurre often in succeeding times^g.

The like might be noted with the Græcians. Butt some objection is made, that the use of them was not so common with the Romans; where "the right of gold rings" was challenged, and given, to their equites; and were carryed for sealing, more than for ornament^h.

Butt Pliny holds, that then the use of seale rings with them was promiscuous; though afterwards it might be restrained to those who were of such an estate only, and were freemenⁱ. And by a later imperiall law every one, who was manumitted, had the right of using gold rings. And with them, the *gemma sardoniches*, mentioned by Juvenal^k, is nothing else butt a seale cutt in that stone, which every freeman with them might use; and had the right of sealing with such rings, if he pleased.

And thus it was in most nations. And as that right of seale rings, amongst the Romans, was given to men of wealth, who had so much estate: so those who are capable with us, to be electors of knights of the shires, must be freeholders, men of estates, who can dispend forty shillings per annum or above, (as is before noted;)

^f De acquir. rer. dom. c. 16. § 12. — Hill. 44 H. 3. placita apud West. rot. 28. Staff. in arce Lond. — Jer. xxxii. ^g Gen. xxxviii. 18. — Exod. xxviii. 11. & 36.

^h Jus aureorum annulorum. — Tit. de ord. test. digest. cod. & instit.

ⁱ Pliny, hist. nat. 33. c. 1.

^k Cujac. observat. 7. c. 14. — Satyr. 13.

and which, in the time of making of that statute, was a considerable estate. And the persons capable to be elected are to be knights, whose estate was usually valued in those times att twenty pounds per annum; or notable esquires, or notable gentlemen, fitt to be knights; men of quality, and wealth. Butt of the qualification of counsellors, or senators, by wealth; somewhat hath bin before noted.

It is playne, by the words of our writ, that the seales of those who are present att the choice must be affixed to the indenture of election; which the sherife is to returne into the chancery. And usually, the seales of the principall gentlemen, who are present att the election, are putt to the indenture; together also with some seales of other freeholders of lesser ranke: to testify the generality of the opinion of the freeholders, in the election.

C H A P. CXI

The said election made.

WHAT is ment, by “the election made,” is explained in other parts of this writ. To “certefy the election made” is, by indenture under the feale of the sheriffe, and the feales of those present att the choyce, to certefy the names of the persons elected by the countey, cittyes, and boroughs, and impowred by them to serve in parlement as their deputies; to doe, and consent to such matters, as by the common councell of the kingdome, by the favour of God, shall happen to be ordained: and to certefy this, is to “certefy the election made.”

This way of election of new members, to serve in every parlement, gives a liberty to the people to choose the fittest persons to serve them; and is a spurre to the persons elected, to endeavour to performe the better service, that they may continue in the favour of their countrymen.

Aristotle holdes, that “men ought to commaund, and to obey, by turnes^a;” that is, in common magistracy: and for that purpose, those magistrates to be elected for a time only. So it is in our corporations, and in our members of parlement. So it was with the græcian æsymnetæ; the roman dictators, consuls, ædiles,

^a Per vices, est imperandum; parendum etiam, per vicissitudinem.

prætors, tribunes, and leffer magistrates; and the reason for consuls is given in Matthew of Westminster. "It pleased them, (saith he,) that the commaund should last no longer then a year; least, by continuance of power, they should become the more insolent." Which is prevented by election of magistrates, and the succession of them, by turnes; which, (saith Case in his sphere of a citty,) the hope of the cittizens, the order of a citty, the custome of auncestors, and justice itselſe perswadeth ^b.

^b Mat. West. p. 34. Placuit ne imperium diutius quam annum haberent; ne, per diuturnitatem potestatis, insolentiores redderentur.—p. 98.

C H A P. CXII

In your full countey court.

OF “the countey court,” somewhat hath bin before noted. And it may be not impertinent uppon this occasion, to take a short view of the governement of this kingdome, as it hath relation to rulers, and judicatories in the severall countreyes, and within severall præcincts: for the preservation of the publique peace; and for the ease of the people in determining their differences, and legall affayres, neere home.

The principall of these standing judicatories, and publique coun-
cells, is “the countey courte.” This Sir H. Spelman calles, “the
tribunall of common justice, and the theater of the countey
power^a,” where sometime were assembled, the nobles living in
that countey. It was antiently eminent, and of frequent note in
the old lawes. Then the chieft of legall proceedings were dis-
patched in the countrey; either in townes, before the lord of the
towne, or mannor; or in the hundred, before the lord of the hun-
dred; or in the countey, before the earle, or his deputy, whom
the Saxons called sherife^b, and the Normans, viscount. From
these it was not lawfull to appeale, to the king’s court, unlesse for
defaulte of justice^c: and so it was practised both by the Saxons,

^a Glossar. verbo “comitatus.” Forum plebeie justitiæ, et theatrum comitivæ po-
testatis, &c.

^b *генералъ, сцигенералъ.*

^c Eadgari leges. c. 2.

Canuti leges. p. 2. c. 16.

Danes, and Normans. The writ of right is some testimony thereof; wherby the king commaunds the lord of the mannor, to doe right to his tenant of so many acres, &c. "And if you doe not, then the sheriffe of that countey shall doe it, that we may heare no further clamor therof for default of right^d." This, (saith our author,) was the reason of former ages: butt att this day, neglecting the countrey judicatories, every one for slight matters flyes att first to the king's courts, and travailes up to London.

The Saxons antiently had a court, which they called sciregemot, or the meeting of the shire; att which the earle, the bishop, and the nobles, and freeholders, of the shire were present. The bishop pronounced the divine law, and the earle the secular law; the one assisting the other. And heere was cognisance, as well of criminall as civill, as well of ecclesiasticall as lay matters: butt afterwards, king Wil. 1. divided the jurisdictions. There is another kind of sciregemote lesse eminent than the former, which in the lawes of Edward the confessor is called the *geþeþar gemot*; that is, the sherife's meeting, or courte^e. This (saith Spelman,) by the institution of that Edward, was held every moneth. And therein civill controversies are determined.

It is a speciall authority which Sir Roger Owen attests^f; that all the antient manuscripts of abbeyes, (which he had seene,) discoursing of the clergy suits, make mention of them to be in the lay courts of the king, and perticularly in the countey court. That plentifull instances in this kinde are in the manuscript of the abbey of Ely: and an irrefragable authority thereof, is the memorable letters patents of William the conqueror, to the church of Lincolne, recited by *Inspeximus 2 R. 2*; whereby it is remembred, that even

^d Et nisi feceris, vicecomes illius comitatus faciat: ne amplius clamorem inde audiamus, pro defectu recti.

^e Cap. ult.

^f MS. 2. pt. f. 243. b.

for matters which concerned cure of foules, untill this time, the proceedings by the bishops, and arch deacons were in the hundred court, and countey court; and secular men held the plea therof; which was altered by this charter.

In the lawes of H. 1. it is recited, as the antient constitutions of the kingdome, and now renewed; that generall pleas of the countey shall be held att certaine times, and places; there “being present the bishops, the earles, the sherifes, the lords of hundreds, the aldermen, governours, officers, barons, and vavasours^e :” and there were determined, 1. Matters concerning religion; 2. Concerning the king; 3. Concerning partie, and partie. And this was the jurisdiction of the countey courte.

Sir Roger Owen affirmeth^h, that the sherifes, after the conquest, had their countey courts: as appears by the charter of the conqueror made to the abbey of Maldun, where he grants them the same liberties that the confessor formerly granted them; namely, to be quit from all suites begun in the sherifes courts. And this also is plaine by Domesday, where the church of Worcestere, afore the conquest, had the priviledge for the inhabitants of their lands, to be freed from the sherife's countey courts: butt more especially, by the charter of king Edred, and by the booke of Ely; and in the charter of Dunham, there is perticular mention of “the countey court,” in the time of the Saxon kingsⁱ. Lambard shewes, that king Edward appointed the countey court to be held every moneth^k: and we find a judgement given in the countey court, in the time of king Edgar. Brithnothus, abbot of Ely, bought of a widdow one hide,

^e Lib. rubr. scaccar. Leg. H. 1. c. 7.—Episcopi, comites, vicarii, centenarii aldermanni, prefecti, præpositi, barones, vavasores interfuerint.

^h MS. c. 17.

ⁱ Chart. Edred. abbat. de Croyland. an. 948.

^k Saxon lawes—

Leg. Ed. conf.

and 24 acres of land for 7l. The widdow, conceiving it not to be an absolute sale, commenced a long suit against the abbot, in the countey court of Cambridge. The matter being heard, and the abbot fully proving his bargaine; Egelwinus, the earle or sherife of Cambridgeshire, requested the abbot, for his sake, to give the widdow 3l. more for the land; the which the abbot did: and so the matter was ended. But the MS. exclames against “the wickednes of the age” in thus robbing the church¹. And I have the rather cited the case, to show how jealous the clergy then were of lay mens gaping after their estates; and, in this case, of the clergye’s clamour, without cause, against the temporall judges, for perswading the abbot to give 3l. to a poore widdow, to putt an end to a suite: also, that the judges then moved matter of equity, when the common law was strict.

Lambard expounds the word *conventus*, to signify “the countey court;” which was also called *folcgemote* from *folc*, which is “people,” and *gemote* “a meeting;” and, *sciregemote*, a meeting of the shire, the countey court: and saith there were two sorts of them, the one called “the countey court;” the other, the sherife’s turne to this day. The first, king Edward ordeined, to be kept monethly; the other, king Edgar appointed, to be held twice a year^m.

Coke, out of the *Mirroir of justices*, cites the sherifs to hold, by antient ordinance, generall assemblies twice a year, in every hundred; “where all the free tenants within the hundred were obliged to come, by the service of their fees.” And bicause the sherifs kept their turnes of the hundreds, therefore they were called

¹ O nefas seculi! O ambitio mundi! qui nunquam cessat ecclesiasticis rebus inhiare; et inhiando, dilacetare, &c.

^m Preface ad leg. Saxon. *folcgemote*—*Sciregemote*.—Leg. Edouardi, c. 5. Leg. Edgar, c. 11.

the sherifes turnes; “where it belonged to the sherifs to inquire of all personall crimes, and of all circumstances of crimes committed in the hundred; and, of the wrongs of the ministers of the king, and queene; and, of wrongs done to the king, and to the commonaltie of the people.” This our excellent english antiquary calles “the court of inquisitions^o,” and remembers the law of Edgar, before noted, for the holding of it twice a yeare, and the bishop of the diocesse, with the senator or sherife, to be present; the one, to instruct the people in the divine law, the other, to declare to them the humane law.

Butt there was a speciall court called the hundred court, wherof, (saith Sir Roger Owen,) the bayliffes were judges; and they were likewise afore the conquest: and the former records prove it where, in the charters, exemption is graunted “from suits in countey courts, and in hundred courts^p.” And the deed of king Eldred affirmeth, if the sherife, bailiffe or other minister doe intermeddle; they shall loose 100 l. And the charter of king Edgar, to the monastery of Ely, graunts them the secular causes of two hundreds within the fennes; and, of five hundreds, out of the fennes. The words are, “Ethelwolph the bishop bought of Edgar, for an hundred pounds and a golden crosse, twenty hides of land, seaven hundreds, and the halfe of two hundreds.” And there is a discourse of the hundred court held att Walmesford, and that Wickford was bought with the hundred; and that the alderman held the hundred court in the church yeard. In Domesday booke, the baylif of the hundred was a great officer in the countey, next unto

ⁿ C. I. § 16. Ou tous les fief tenants, deins le hundred, sont obliges de venir, per le servage de leur fiefs.—Ou aux viscounts appartient d'enquérir de tous pêches personels, &c. ^o Jani Anglor. Seld. p. 130. Inquisitionum curiam.

^p A sectis in shiris, et hundredis.

the sherife; and in the survey of domesday, commonly, he was the first man sworne for the description of his hundred. The jurisdiction of this courte is sett downe, in the lawes of king Ethelred: "that in every hundred there shall be courts held; and twelve men of free condition, elders in age, together with the sherife, shall be sworne uppon the evangelists, that they will condemne no innocent person, nor [acquit] no guilty¹." Which among many others, by the way, is a sufficient confuting of the error of Polydore, who makes W. 1. the introducer of our tryalls by twelve men.

In the history of tithes it is remembred, that in the Saxons times a jurisdiction of ecclesiastique, as well as civill causes, was exercised jointly by the bishop of the diocesse, and by the sherif or alderman of "the shire gemot," or hundred, or countey court; where they both sate, the one to give "God's right," and the other "the world's right²;" that is, the one to judge according to the lawes of the kingdome; the other, to direct according to divinity.

There be also other courts for justice in the countey, in lesser præcincts of towns, and mannors; as courts leet, and courts baron. That mannors, (to which court barons are incident,) were afore the conquest by the name of "manner," appears in Domesday, and many other records. Ingulphus mentions the mannors of Deping, &c. which the abbot of Croyland kept for his demesne; and, of the baylife of the mannor.

The charters of Withafius, and of king Bertulphus, doe mention mannors by name: and so doth a charter of king Edgar³, and

¹ In singulis centuriis comitia sunt; atque liberæ conditionis viri duodeni, ætate superiores, una cum præposito, sacra tenentes juranto, &c. ² Seld. hist.

tithes, p. 412.—Leg. Æthelstani apud Fox. in eccles. hist. l. 3. p. 135. col. 1. Sciplegemote—Gober night—pipulder night. ³ An. 833. An. 850. An. 966.

many other charters. And in the booke of Ely it is shewed, how Edelwolphus, the bishop, bought the mannor of Lyndune, and the hamlets, for an hundred markes and a good horse. And in Domesday is expresse mention of the mannor of Newnham, which in the confessor's time had a court baron: and the confessor's lawes make perticular mention of courts baron. That our leetes were before the conquest is evident, in that they retaine the same names, and stile of the court to this day, "the view of frank pledge" and deciners[†], and the subdividings of hundreds into tithings tenths or decinaries, often mentioned in the Saxon kings edicts and histories, and which is nothing butt a court leete; and that this manner of inquiry of the chiefe pledge, vulgarly recited in the Saxon lawes for a leete, ought to continue to this day, appears by severall statutes concerning the same, and the authors who write therof[‡]. The Saxon king Woolpher, by his charter[¶], graunted to the abbey of Medhamsted the hundreds which are called Etheldredia; and that they should have franciam plegiam, in all their demesne lands in their owne possession: and in an iter of E. 3. there is mention of this charter^{*}.

In the lawes of Edward the confessor, we find this mention of these. "When some foolish and wicked people wilfully and too usually did offend against their neighbours; the wise men began to consult together about this matter, and appointed justices for every ten freeborghes, whom we may call decanos; butt in english *tenheorð*, that is, the head of ten. And they handled the causes between the townes, and neighbors; and according to offences, tooke amends, and made agreements; to wit, of pastures, meadowes, corne, and of strifes among neighbors, and innumerable like

[†] *Vifus franci plegii; curia baronis.*

MS. *Vifus franci plegii,*

[¶] An. 664.

[‡] 18 E. 2. *Mirroir of justices,*

^{*} Itin. 3 E. 3. rot. 30.

diffentions which doe infest humane frailty, and incessantly “oppose*” it. Butt when the greater causes did arise, they were referred to the superior judges of them, whom the said wisemen had constituted over them; to wit, over ten deans; whom we may call centurions, or hundredors, bicause they judged over an hundred friborghs^y.”

There was another antient judicatory, in citties and townes, which the Saxons called burghmote, that is, the “meeting of the borough;” att which also the bishop, and alderman, were to be present. Spelman sayes it was instituted by king Edgar. “In boroughs and citties, thrice a yeare it was held, for the determining of causes and occasions there arising; and for promoting the safety of the cittizens^z.” There was likewise a wardmote, that is, an assembly of one or more wardes, or parts of the citty; for the determining of matters therunto belonging. This court, and by this name, is still in London and other citties; and an assembly of the whole citty, they call also the folkmote; they have besides, their hustings, that is, a “house of things” or of pleas, a judicatory of this name to this day remaining among them.

Most of our antiquaries take it from Ingulphus^a, that king Alfred did first make the division of counties, hundreds, and tithings. Were that true, (saith Selden,) then no man had a shire or countey before Alfred’s time. Butt is is plaine, (saith he, and Sir Roger Owen;) that Alfred was not the first that divided the kingdome into shires; neither were the pagi and provinciæ, which he speakes of, other then shires and comitatus. And before

^y Cap. 32. Vid. edit. Wilkins, p. 203. * Oppugnant. (M) ^z Burghemore. Leg. Canut. MS. c. 44.—Lib. 5. Infra burgos, et civitates, ter in anno conscribitur; ad causas et occasiones, ibidem natas, definiendas; salutemque civium promovendam.

^a Pag. 870.

Alfred's time, those pagi had their aldermen in them; as "Ethelwolfe earle of Barkshire, Ceorle earle of Devonshire, and Eanulfe earle of Somersetsshire^b, under king Athelwolfe father of king Alfred, are remembred in Asser Menevensis, who lived in king Alfred's time. Two of them are also in Ethelwerd, a writer of the saxon times; besides Ofric, "alderman of Dorset." Ealhere was att that time alderman of Kent, and Auda of Surrey^c. And Ingulphus hath the charter of king Ethelbald's foundation of Crowland, wherunto the comites of Leicester, and Lincolne, subscribe. Besides, the originall lawes of king Ina say, that if an alderman were guilty of an escape; he was to "forfeit his shire." How then could king Alfred begin that division? Butt, (saith our author,) he might divide the shire into hundreds, and tithings; for which he cites other authorities^d: and that uppon the uniting of the heptarchie, the division into counties was made. Butt that Alfred ordeined the hundred, and tithings, seemes to have some doubt from [the] brittish wordes cantred, for an hundred, and commotum, for an halfe hundred, which are still in use with the Welch: and if they had hundreds, and shires, they must be of an elder institution than king Alfred's time.

Lambard saith, that in this division of England into shires, hundreds, and tithings, the counsell of Jethro to Moses, was pursued^e, wherof somewhat hath bin formerly noted; as, of the sherifs being rulers of thousands; constables of hundreds, rulers of hundreds; petty constables, rulers of fifties; and tithingmen, rulers of tens,

^b 2 Tit. hon. p. 614.—Ethelwolfius, barocensis pagæ comes; Ceorle, Domnaniæ comes; Eanulfe, somersetenensis pagæ comes.

dux. Hoveden.—Huntington.—Asserius.

^c Lib. 3. c. 3.—Dorsetum

^d An. 720. c. 36. apud Brompton.

MS. c. 31. & c. 8. Solige hys reise. perdat comitatum suum.—Malmesb. l. 2. c. 4.

H. Huntingdon.

^e Prefat. ad leg. Saxon.

Att this day, in all citties, and in corporations, they have their courts of justice for smaller causes, for which an appeale lyes to the superior courts.

The saxon word for a "tithing," we keepe to this day; and the nine men, or families, over whom he is ruler, we call "free pledges." The ruler was called "tithing man," and in some places *zienheorod* or "head of ten;" or the "free borgshead;" and the Kentish men call him "borsholder," that is "borough's elder." And the saxon names "hundred, and shire," are also still retained with us in the same signification, wherin they used it. And their order was, that of the lesser matters, the tithings did judge; if they were more difficult, they were referred to the hundred court; and the most difficult of all, unto the generall countey court.

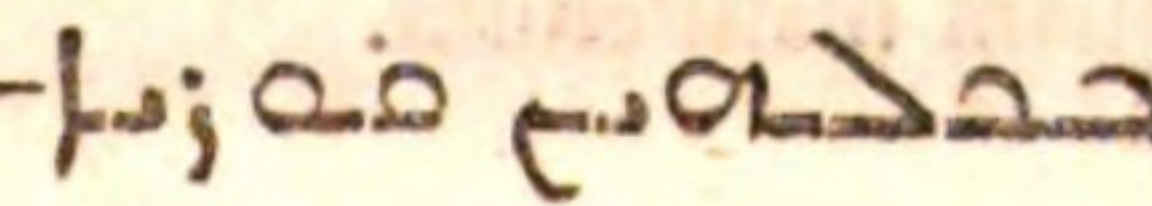
It is sayd, in Bullen's case; that "the true institution of this our countey court is vanished:" yett, (saith Sir Roger Owen^s;) it doth not pretend any alteration of substance, butt of some effects. And though some perticular proceedings, in these countrey courts, may vary from the saxon lawes; yett in regard it hath the same name, and much of the power, it may be reckoned to be *idem numero*. For it appears, by Glanvile, that in H. 2. time, if any matter were removed for difficultie, from the countrey to Westminster; so soone as the judges had shoven what the law was, the matter was sent back to the lord of the mannor's court baron. And surely that old way of justice att home, and the exact division of it, caused great ease, and safety, to the people. And though there be difference att this day in these courts, from what they were antiently; yett they may, (without so grosse an error as some would reckon it,) be yett stiled the same. The river carrieth the same name; though

^f *teoðung. zienmantale. teoðungmon—pneoborh. pneoborh heorod—humbred. Scipe.*
^s Vera institutio hujus curiæ evanuit.—MS. c. 17.

yesterdaye's, and this day's, waters in it are not the same. And in this journey to the countrey, we may find the gentlemen who can, with Ovid, "reckon their pedigrees;" and have lands of more ancient discent, than the gentlemen about Westminster have; most of them surveying the land "which their great grandfather, grandfather, and father held^b." So they live under, and enjoy the same jurisdiction, and lawes, which were used in their countrey afore duke William's time; perticularly, the ordinary courts, and offices, in every countey. As att this day are the sherifes, and their countey, and turne courts; the baylifs, and their hundred courts; the lords of mannors, and their court leets, and court barons; still in being in the countrey, and retaining the same name, and nature, they had before the conquest.

In these judicatories they followed the expresse patterne of the Hebrewes, to whom the commaund of God was, "judges and officers shalt thou make thee in all thy gates." The greeke version is, "in all thy citties." Onkelos and Jonathan have the like. The syriack is, "in all thy townes." The spanish, french, italian, german, and old english is "in all thy citties," butt the arabick goes more in generall, "in all thy dwellings or habitations." Heer-uppon the Jerusalem Gemara inferres commeth that text; "so these things shall be for a statute of judgement unto you, throughout your generations, in all your dwellings¹." And accordingly it was observed; and we have the testimony therof in rabbi Maimon. "The præcept of the law, (saith he on this text,) is affirmative; that they should appoint judges, and ministers or officers, in every citty, and in every province or territory; because it is written, judges and officers shalt thou make thee in all thy gates." With him

^b Generis dinumerare gradus.—Quod proavus, quod avus, quod pater excoluit.

¹ Deut. xvi. 18. ἐν πάσαις ταῖς πόλεσί. σου.——Num. xxxv. 29. فی جميع بحالك

agree severall other rabbins, within "thy gates," that is, within the land, thou shalt constitute houses of judgement in every "province, territory or countrey^k." And the doctrine of the Talmude is agreeable heerunto; that besides Jerusalem, throughout the other countreyes, and citties, the lesser sanhedrims were ordeined. Which was done, (saith a rabbi) least otherwise every one should be constrained, by cause of suit, to repayre to the great sanhedrim att Jerusalem^l. And therefore judges, and ministers, were made in every congregation, or synagogue of the people, citty, towne, and countrey.

In some of their authors it is held, that seaven were of these lesser sanhedrims; butt others say, that if three performe the buisnes, it is well enough done. And in the 2 booke of the sanhedrim, it is concluded; that the sanhedrim of three was constituted through all the towns, and countries. Hence is there so often mention of the elders of citties, in the holy story; which were the judges in those places; and their jurisdiction was of smaller causes, and an appeal lay from them, to the superiour sanhedrims. And that, in their tribunals, both sacred, and prophane, matters were determined by the same judges; the author of the booke of the sanhedrims of the antient Hebrewes saith, "it is out of controversy, and most manifest^m."

Who sees not in this briefe scheme a perfect patterne in the jewish government, of the tithings, halymotes, burghmotes, hun-

^k Tit. suo sanhedr. c. 1. & in præcept. affirm. 176.—R. Salomon ad loc. dict. Num. פֶּלֶךְ—הַפְּרָכִיָּה 'Επαρχία. ^l R. Menachem Recanati.

^m Flavius Josephus, Originum l. 4. c. 8. Misna. R. Simeon. Ben Gamaliel. tit. sanh. c. 1.—Seld. p. 433.—1 Ki. xxi. 8. Deut. xix. 12. & xxi. 3, 4. 6. 19. 20. & xxii. 15. 18. & xxv. 8. Jos. xx. 4. Jud. viii. 16. Ruth iv. 2. Ezr. x. 14.—Maimon. tit. sanhed. c. 5. § 4.—L. 2. de syned. p. 639. Extra controversiam videtur, et perquam manifestum.

dredmotes, and sciremotes in our english judicatories? Nor was it an example to us only; butt followed by most other nations, as to divisions of countries, and inferiour and superiour judicatories in cittyes, townes and countryes, generally practised; and most consonant to reason, and the safety, ease, and good government of the people.

That the Græcians had their divisions of their countryes, and judicatories in those severall præcincts out of their great cittyes, appears in those officers whom they termed "bishops," to whome the care of the provinces affayres did appertaine. And being appointed as arbitrators, or judges throughout all the provinces; they inquired after contentions, publique wrongs, and injuries to jurisdictions; if any one went against their ordination, they gave sentence against him, wherto he must be obedient^a. Cicero mentions this officer, where he saith. "I am president in a buisnes; bicause Pompey wills, that I shall be bishop of all Campania^b." For their diligence in more high speculations, (saith our author;) christians have made the name ecclesiasticall, and given it to the chiefeest members of the church.

In the antient empire the word "comes" was given to those principall ministers who were sent forth, for the government of citties, and provinces; and both their office, and territory, were called comitatus^c. Some hold, that they began under Berengarius, Otho, or Charles the great; butt they were some of them much antienter, under the elder Romans.

The division of their people (especially armies) [was] into thousands, hundreds and tennes, wherof Rosinus, Godwyn, and others

^a ἐπίσκοποι. Pedro Mexio, Treasury of antient and moderne times. p. 119.

^b In epist. ad Attic.

^c Spelman. Glossar. verb. "comitatus."

doe write att large; and, of their judicatories and officers as proconsuls, and proprætors in the severall provinces both for the military, and civill affayres; who had also under them their lieutenants or legati, for the government of the severall citties, and provinces, under their dominion. They had also their centumviraes judices. Butt the antient Goths and Germans divided their territories, and countries, “by hundreds^a,” appointing rulers over each of them, whom they called centurions, and the French centeniers from the number; and the governor they called a cent grafe. Tacitus mentions “the centeni of every territory^r,” and the Gothes, Longobards, and Franks retained this division better then the Saxons.

In the lawes of the Vise Gothes is mention of the comes, vice comes, “conservator of the peace, ruler of 1000, ruler of 100, and ruler of ten,” under the name of judges. And that they had their severall judicatories appears, in that the thynphadus was to inquire of offences, by the centenarius; and the rulers of hundreds, by the tithingmen. And the rulers of hundreds were reckoned among the lesser judges, and their jurisdiction was of smaller causes: they could not adjudge any one to death, or losse of his goods or liberty, or to imprisonment; butt those matters were referred to the comes, or his deputy^r.

The antient Germans “held their hundred courts,” as to the generall buisnes, thrice a yeare; as to perticular, and ordinary buisnes, once in seaven nights, and sometimes once a fortnight. And Tacitus mentions the “election of the rulers of hundreds, in their publique councells,” whom he calles “princes; who admi-

^a Per centenas, five centurias.

^r De morib. Germanor. Centeni ex singulis

pagis sunt.

^s Leg. Wise-Gothor. l. 2. tit. 2. Pacis assertor, millenarius, centenarius, decanus. Leg. Wise-Goth. l. 9. tit. 2. l. 1. & l. 2. — Leg. Car. mag. in Longobard. l. 2. tit. 52. leg. 3. Capitular. Car. et Lodovic. impp. l. 4. c. 26. & l. 7. c. 79.

nister

nister law through, and in every countrey, and towne:" an exact description of our countrey, and towne judicatories. Our author proceedes, in this description of our german auncestors; that "to every one of these were joyned out of the people, an hundred comites, who were present both for counsell, and authority:" as the hundredors with us, antiently, were with the earle, or his deputy; and are yett called the judges of that court. And as our people tooke an oath of fidelity in those courts; so the like was done by the antient Germans, in their hundred courts^t. And this name of hundreds continues with the Gothes, and Swedes, to this day, wherof more anon.

Of France it is observed by Pasquier, and out of him by Du Haillan; that antiently "every towne had a comte for their judge," who had a publique tribunall, uppon that lawe; "that neither the missus, nor comes or publique judge, shall hold their pleas in the houses of the church, as by custome;" butt shall constitute houses in publique places, wherein they shall hold their pleas^u: and these were as bailifs. And in each territory they had, and still have bailifs, seneschalls, vice compts, and viguiers, and provosts; which are the ordinary judges in citties, towns, and præcincts. And as with us, they had their high justice in their superior courts, and parlements; and, their lower justice in smaller causes, in their townes, and perticular territories^w.

^t Leg. Alman. tit. 36. Fiat conventus in omni centena.—De morib. Germanor. Centeni comites eliguntur in eisdem conciliis, et principes, qui jura per agros vicosque reddunt. Centeni singulis ex plebe comites, in consilium simul et auctoritatem, adsunt. —Capit. Car. Calvi, apud Sylvat. edit. Istud jurabunt centenarii.

^u Pasq. Recherches. p. 110. Il n'y avoit ville qui n'eust son comte, pour judge.—Decretal. 1. tit. dés immunitéz des eglises. Ut in domibus ecclesiarum neque missus, neque comes, vel judex publicus, quasi pro consuetudine, placitum teneant, &c.

^w Vincentius Lupanus. p. 478. Livre des antiquitez de la ville de Paris. p. 164. Haute justice. basse justice.

In Spayne, besides the supream courts and counsell, there “ ar judges constituted by the king in all citties, and townes ;” who have cognisance, and judge the causes of the inhabitants in those citties and townes, and the territories of them : and causes of lesse value then 10000 maropets are determined by the consistory of the citty, or towne, to which by custome the people concerned use to resorte ^x.

In like manner it is in Italy, and in other countryes. And plainly the same course yett remaines in practise among the Swedes, and Gothes ; who had antiently their governors of provinces, called hofddingers, that is, the heads of territories, who administred justice to the people. They have in every præinct severall arbitrators, or friendly composers of differences, to whome all parties are to repayre ; and they, to indeavor the composing of their differences, before they proceed to suit in law ; instituted by their king, Algotus^y. The people used to meet yearly, to give sentence in the great matters ; where the king was præident. Afterwards the inconvenience of the judgement of a multitude, and the injustice therof being found ; and the people, weary therof : certaine judges were appointed, prudent in the lawes and affayres ; and peculiar and distinct tribunals were constituted in citties, territories and provinces. This they called, from an old scandian word, raffting or rafturating ; that is, “ to complaine, to observe, to punish :” thence it is sayd, that “ they did consider every one, according to his offence ^z.” From these inferior judicatories an appeale did lye to

^x Respub. Hispan. p. 129. In singulis civitatibus, et oppidis, per ipsum regem justitiæ constituuntur.—Resp. Hispan. p. 108.

Goth. p. 53.—Jo. Magnus. l. 8. c. 39.

^y Loccennius, de antiquit. Sueo-

^z Loccen. antiquit. Sueo-Goth.

p. 59. Peculiaria, ac distincta tribunalia, in urbibus, territoriis, ac provinciis, &c. Leg. Westro-Goth. de judice provincial. Tubbi.—Han Raffti hi hwarium áptir sum giardh.

the king's court, which they terme konungsnamd, where the king, in person usually, sate in judgement; and named or delegated judges, by him: and this is in name, and jurisdiction, much like our court of king's bench. From the inferior judicatories, an appeal lay to the provinciall court; and from thence, to the king's court. The manner of their appeals, and the severall jurisdictions in townes, are fully described in their authors; and are strangely like unto ours. As in the appointment of 12 men, as judges of the fact, named in every territory, who determine all suits; and take a solemne oath, that they will pronounce no innocent person guilty, like our juries: and the question demaunded of them, "Is the prisoner guilty or not guilty;" which they pronounce. And these gothique jurors sweare to give their verdict according to conscience, and reason, divinely bestowed upon them; and not to neglect their duty for consanguinity, affinity, or private affection: and they are usually stiled nambmen, gud man, and sang man, that is, "named men, good men, and true^a;" the very words spoken by our criers, when they have counted the jury, "twelve good men, and true, stand together," &c. They are also called hundaris nambd konungs; "the king's named judges of the hundred;" as some will have it. Doubtles they have the very terme "hundred," for one of the divisions of their territories; and wherein their judicatories, in smaller causes, are exercised. In some cases, as in absence of the king, in the provinciall judicatory the bishop of the diocese with two capitulers, and the legifer with two senators, or other eminent persons, doe sitt together. "The clerkes decide ecclesiastike matters, and the laymen, the secular buisnes^b;" plainly as our bishops and sherifes antiently, in our countey courts, as hath bin before noted. In citties, and townes, justice is admi-

^a Mich. O. Wexionius, epitom. descript. Sueciæ, l. 4. c. 9. — Rom. B. LL. juxta c. 35. — Wexionius, l. 4. c. 9.
^b Ita ut clerici ecclesiastica, laici secularia deciderent.

nistred by 4 consuls, and 24 senators of the towne; who take an oath to be faithfull to the king; in all judgements equally to follow justice, between poore, and rich; and never to pervert the law; and right, contrary to conscience, or to divert it to an ill sence; and not to judge unrighteously, for feare, or covetuousnes, hatred, envy, uncharitablenes; nor, for bond of bloud, or friendship.

These 4 consuls, and 24 town senators, take their turnes; and halfe of them, yearly, intend the judgements and publique matters; together with a prætor appointed by the king; in the absence of whome, or of his deputy, no sentence can be given; and he, in publique suffrages, hath the casting vote. Under these, in towns, is also a lower judicatory, like our wardemotes; before the king's officer, and two of the towne senators: and from these an appeal lyes to the prætor, consuls, and senators; butt uppon first laying downe of caution-money, which is no evill custome.

The present course of justice among them, beginning with the lowest, is in this manner. First in a smalle territory, like our tithings or mannors, they have a judge whom they call the lagelifer, that is, "the law reader;" who when a controversy is between any within his præinct, this judge readeth, out of the booke of law, what the law is in that case; and so it is decided. If the case be doubtfull, or the parties not satisfyed; they may appeale to the next judicatory: the judge wherof they call the land's domer; that is, "the judge of such a land or præinct." Dome, in our old english, is "a judgement," and domer is "a judge;" and this is like to our hundred court. From hence in case of difficultie, or injustice; they may appeale to the next judicatorie, the judge wherof they call the landts heueden, that is, "the head of the land;" a governor of a province, or shire; an officer like our sherife, and his judicatory like our countey court.

When one appeales from the lagelifer, to the landts domer; in hearing the appeale the landts domer is assisted with all the lagelifers in his præinct: and in hearing the appeale from the landts domer, to the landts heueden, he is assisted by all the landts domers in his territory. And from the landts heueden, one may appeale to the lageman who is the judge of the next superiour judicatorie, and is commonly a ricks senator, and governor of severall provinces; not unlike the presidents of the councells, in Wales, and in the north. When the lageman heares an appeale, he is assisted by all the landts heuedens within his gouvernement. And [from] the lageman also lyes an appeale to the king's supream court for ordinary justice, like our king's bench, which they call the oversight, or hoveright: wherof there are three tribunals, not long since established, within the dominions of this crowne; the first in Westro Gothland, the second att Stockholme, and the third in Finland. This court of oversight hath the high justice, to which an appeale lyes from all the inferiour judicatories. And from the oversight itselfe, a petition of review lyes to the king, who commonly appoints the chancellor, and some other senators, delegates to heare, and review the sentence given below; and, to report it to the king: and from this judgement also lyes the last appeale, to their ricksdagh, or parlement. In which proceedings is strange resemblance to the gouvernement, (especially the more antient,) of this kingdome; and perticularly in the matter of appeales, which this people, and all others, have great cause to esteem a chiefe point of their right, and liberty.

Butt I may be censured to have wasted too much time, on this subject. It is consonant to reason, and the practice of all countries, to have severall divisions, and præincts, within their dominions; and, severall judicatories in the citties, townes, and præincts within those divisions; for the better gouvernement, ease, and safety of the inhabitants.

C H A P. CXIII

Remitting to us.

THE writ takes care to direct the sherife, in every perticular ; that the king may have a full answeare, and retorne from the sherife, of the execution of the writ. Therfor he is commanded to “ send back to the king,” into his chancery, (the place where such records are kept,) one part of the indentures ; wherby it will appear, in certaine, who are the persons elected to serve in parlement ; and, the power given to them, for that service.

The reason of our law for the certainty, and exactnes of returnes of sherifes, is bicause no averrement lyes against the retorne of such an officer. Yett an action uppon the case lyes against a sherife, for a false retorne ; and an action uppon the statute, for not returning a person duely elected to serve in parlement, as is before noted. And the parlement in E. 1. time taking notice, that sherifes many times make false returnes, and lying ; it ordeines : that they shall be punished, by the justices once, or twice ; butt the third time none shall have to doe therwith, butt the king. “ Wherefore, (saith the act,) lett the sherifes beware from henceforth ; for such manner of answeares redound much to the dishonor of the king^a.” Much more doth it redound to the dishonor of the king ; and, the highest measure of injury to counties, citties, and

^a Lib. Intrat. f. 11.—13 E. 1. stat. Westm. 2. c. 39. 21 E. 1. c. 16. 52 H. 3. c. 3. boroughs :

boroughs: when a sherife shall presume "to remit, unto the king," the names of persons not duely elected by the people; and omit those whom the people have chosen, and intrusted, with their lives, and fortunes. A greater misdemeanor can hardly be committed by a minister, nor, deserving a more severe punishment; than this publique, injurious, and most arrogant presumption.

C H A P. CXIV

One part of the indentures.

IT is "the indentures" in writing, under the seales of the electors, which certify, and in a manner confirme the knights, cittizens, and burgesſes; inabling them to ſitt, and act, in parlement. The members alſo of the lords houſe are generally, att this day, conſtituted by writing under the great ſeale of England; either by writ, or by letters patents.

From the beginning of W. 1. to the latter end of king John, all honorary barons were, for ought appears, only by tenure. From the latter end of king John, till the middle of R. 2. an alteration of great moment fell among the barons, and baronies. For wheras in the former time, every tenant in chiefe was indifferently a parliamentary baron; by reaſon of his tenure, or lands held which made his barony: about the end of king John, ſome only that were moſt eminent of theſe tenants in chiefe, (ſometimes ſtiled majores barones,) were ſummoned to parlement by ſeverall writs directed to them; and the other minores barones, "leſſer barons" that held in chiefe, were ſummoned alſo to parlement not by ſeverall writs, butt by one generall ſummons given by the ſherifes in their ſeverall countyes. Others attribute this diſtinction to the end of H. 3. reigne when, it is ſaid; that after the great diſturbances, and enormous vexations between the king, and Simon de Montefort

Montefort and other barons, the king ordained: that all those earles, and barons, "to whom the king vouchsafed to direct writs of summons, should come unto his parlement; and, no others^a."

And not long after the charter of king John, like enough in his time after magna charta graunted; some lawe was made, that induced the utter exclusion of all tenants in chiefe, from parlements; besides the antienter and greater barons, and such other as the king should in like sort summon by his writ. And from that time, untill the middle of R. 2; none else besides such, and the heirs and successors of such, as were of one of these two kinds, could justly enjoy this honorary title, or priviledge, of being members of the house of lords.

Butt whosoever was personally summoned by the king's writ, in the same tenor as the other barons were; he was thereby created a baron. And this creation, by writ, was an antient way; and by this, (saith Coke,) a man shall gaine an inheritance: and if he be generally called, by writ, to the parlement; he hath a fee simple in the barony, without any words of inheritance^b. Butt others are of opinion, that being called by writ the first time; he hath only an estate, thereby, for life in the barony: and being called to parlement, by writ, the second time; he hath, thereby, an estate of inheritance in the barony. If a man be called by writ to the parlement, and the writ is delivered to him, and he dyeth before he cometh and sitts in parlement; he is no baron: for the direction, and delivery of the writ to him, maketh not him noble; for the writ hath no operation, nor effect, untill he sitt in parlement. For the words of the writ are; "that you be personally present with

^a Math. Paris. p. 343. Seld. 2. tit. hon. p. 709.—Cambden. Brittan. p. 122.—
Quibus ipse rex dignatus est brevia summonitionis dirigere, ut venirent ad parliamentum suum; et non alii.

^b Co. on Litt. p. 9. et p. 16. b.

us, &c. to give your counsell^e." And by his sitting in parlement, his bloud is ennobled to him, and his heirs lineall; and theruppon a baron is called "a peere of parlement." And if issue be joyned in any action, whether one be a baron or not; it shall not be tryed by jury, butt by the record of parlement; which could not appear, unlesse he were of the parlement^d.

The king may limit the generall state of inheritance created by the law, and custome of the realme, to the heirs males, or generall of his body, by the writ: as he did to Bromflete, whom H. 6. called to parlement by the name of "lord Vescey;" with the limitation in the writ, to him, and the heirs males of his body^e.

An estate for life, in a title of nobility, may be gayned by a woman by marriage, by act in law. So the king may create either man, or woman, noble for life; by his writ, or patent. Butt he cannot create them noble, for terme of years; bicause then it might go to executors, or administrators.

Before 11 R. 2. all barons were created, and called to parlement, by writ: butt this king created John Beauchamp de Holte, baron of Kiddermister, by his letters patents^f; before whome there was never any baron created by letters patents, butt by writ. And if a man be created a baron, by letters patents; he must of necessity have these words, "his heirs, or the heirs males of his body, or the heirs of his body," &c. otherwise he hath no inheritance, and the graunt is void. And albeit the creation, by writ, is the an-

^d Personaliter interfuit nobiscum, &c. consilium vestrum impensur.

^e 6 Rep. Co. f. 52, 53. Countes of Rutland's case—8 H. 6. 10. 48 E. 3. 30. 35 H. 6. 46. Plowd. f. 223. 35 H. 6. 46. 48 E. 3. 30. b. 48 Aff. p. 6. 22 Aff. p. 24. Reg. 287. 11 E. 3. br. 472. 20 E. 4. 6. • 27 H. 6. lord Vescey's case. ^f 10 Octob. 11 R. 2. rot. pat.

tienter ; yett the creation by letters patents is the surer : for he may be sufficiently created, by letters patents, and made noble, albeit he never sit in parlement.

In the patent of creation of Beauchamp, baron of Kidderminster ; the consideration is, for services done by the patentee, to the king, formerly ; and, for services which he may doe for the future, “ in our parlements, and councells ^a.”

Since this time, the creations of barons have bin generally by patent ; and constantly, in the patents, this clause hath bin inserted : that he who is created a baron, and his heirs males, shall have, hold and possesse “ a seate, place, and voice, in parlements, publique assëmbles and councells ;” among the rest of the barons, as barons of parlement ^b.

These creations of barons by writ, and patent, are all of them by writing under the great seale of England : and the constituting, and impowring of members of the house of commons, is by indentures in writing under the seale of the sherife, and the seales of those present att the election ; which being returned, in chancery, makes the party a member of parlement.

^a In nostris conciliis et parlamentis, &c.
liamentis, publicis comitiis et conciliis, &c.

^b Sedem locum et vocem in par-

C H A P. CXV

Annexed to these presents.

TO “annexe,” is to fasten, to joyne, or tye one thing to another; so is the word used by latine authors: as, “epistles annexed^a,” diseases annexed, and the like. One part of the indentures of election is to be “annexed,” or tyed to the writ: and so it is observed, in this and most other returnes made by the sherife, the writing of the returne is “annexed to the writ;” and so it is expressed, in the returne uppon this writ^b. First the sherife saith; that by virtue of the writ, he hath caused to be elected two knights; and names them, and their power, as the writ directs. Then he saith; that he made his precepts to A. B. and C. D. bailifes of such a borough, who have thus answered him; and recites the returnes of the bailifs, or majors. Then he mentions the proclamation made according to the writ; and then saith, “the residue of the execution of this writ appears in a certaine indenture sowed unto this writ^c.” And so the indenture, under the seales, is “annexed to these presents;” that is, to the writ which is termed “these presents,” bicause it is then present before the party, or sherife, in his then present reading or consideration. And this phrase

^a Pliny. l. 10. c. 37. Epistolas annexas.
courts, p. 2.

^b Stanford, Jurisdiction of

^c Residuum verò executionis hujus brevis patet in quibusdam indent. huic brevi consut.

of “these presents” is commonly used in the king’s writs, and letters patents; and, in our law conveyances.

I find it seldome used in the formularies of the old roman state; butt in the latter grants of the emperors “by force of these presents,” and “by virtue of these presents,” to signify the thing intended, is seldome omitted. So it is in the charters of the kings of France; “by these presents” we give and confirme: and, of the king of Spayne, and other princes: and generally, in writings of the law^a.

^a Vigore presentium—virtute presentium.—Par ces presents—Por la presente.

C H A P. CXVI

Together with this writ.

WHEN the sherife maketh his returne of the elections of knights, cittizens and burgessees in his countey; he is also “to returne the writ” by which the power was given him to cause the elections to be made: as it is usuall uppon the execution of other writs by the sherife. He is to returne the writ, also with this indorsement; “the execution of this writ appears in a certaine schedule heerunto annexed^a :” and so it is, uppon the returne of this writ. And the reason therof is, that the court, to which the returne is made, viewing the writ which commaunds the thing to be done; may the better judge, whether the same be done according to the commaund by the writ.

It is the proper buisnes of the chancery to issue forth all manner of writs, being the shop of justice; and no writ is of more weight, and consequence, than these writs of summons to the parlement. And the officer trusted with the issuing forth of these, and all other writs, is the chancellor or keepers of the great seale; under which seale they are to be issued, uppon a warrant from the king, to him, for that purpose. And so proper were those summons held to be to the chancery; that the abbot of Northampton, in E. 2. time, by his proxie, showed to the lord chancellor, and the councill of

^a Executio istius brevis patet in quâdam schedula huic brevi annex.

the chancery; that neither the abbot, nor his prædecessors, had bin before summoned to the parlement. And theruppon the abbot procured an order, that his name should be razed out of the rolle of them, that were to be summoned to the parlement: and this appears in an antient manuscript of that abbey^b. The discharge is said to be made by the view of the bishop of Ely, then chancellor; and by the master of the rolles, and divers there named, masters of the chancery; “and of other clerkes of the chancery, and of divers other courts of our lord the king, and of the kingdome^c.”

From the time that these writs of summons are found in our records, to this day; little alteration hath bin made, in the tenor and forme of them. And the reason is given by Coke; bicause the substance of those writs ought to continue in their originall effence, without any alteration, or addition, unles it be by act of parlement: as it is of all other originall writs, att the common law^d.

When the writs of summons went out of the chancery, and were returnable in parlement; an act was made to alter the returne, and to make them returnable in chancery^e.

So the words, for election of knights, being, “two knights girt with swords,” &c: an act of parlement was made, that esquires, and gentlemen, might be eligible^f.

^b Lib. MS. abbath. S^{ti}. Jacob. Northampt. f. 222, 223. ^c Et aliorum clericorum cancellariæ, et aliarum diversarum curiarum domini regis, et regni.

^d Co. 4 Instit. c. 1. p. 10. Bracton. l. 5. f. 413. Britton. f. 122. 127. Fleta. l. 2. c. 1. Westm. 1. c. 15. Co. 1 Instit. § 101. ^e 7 H. 4. c. 15.

^f Duos milites, &c.—23 H. 6. c. 15.

The lords, every one of them, hath a perticular writ of summons, directed to him; wherby he is commaunded "to be present, with the prelates, great men, and nobles, to treat about the affayres aforesaid, and to give your counsell^s."

The words of the writ for election of the commons, are, that they be impowred "to doe, and consent to, those things which,"^h &c.

The judges and barons of the exchequer, of the coise, the king's learned counsell, and some other of his officers and servants, are summoned by writ to give their assistance and attendance, in the house of lords; butt have no votes in parlement, and their writs differ from those to the barons; and are, "to be present with us, and with the rest of our counsell:" and sometimes the words are, "with us, to treat about the premisses, and to give your counsellⁱ."

In the antient writs of summons, to the spirituall barons; they were commaunded to be present, "in the faith, and affection, in which ye are bound to us;" and to the temporall barons, it was, "in the faith and homage;" till about the midst of E. 3. and then it was, "in the faith and allegiance," &c.^k yett "homagio" was afterwards, sometimes, inserted in the same place.

The writs to the bishops, under E. 1. had sometimes the clause of commaunding them "to warne their priors, and deanes," (as

^s Cum praelatis, magnatibus, et proceribus, super dictis negotiis tractaturi, vestrumque consilium impensuri.

^h Ad faciendum, et consentiendum, hiis &c.

ⁱ Co. 4 Instit. c. 1. p. 4.—Quod intersitis nobiscum, et cum cæteris de consilio nostro. Nobiscum super præmissis tractaturi, vestrumque consilium impensuri.

^k In fide et dilectione, quibus nobis tenemini.—In fide, et homagio.—In fide, et ligeantia.

the case was;) and, "their chapters, or covents; and, the archdeacons, and all the clergy of their diocesses: the deans, and priors, and archdeacons to be present themselves; and every chapter, by one, and the clergy by two proxies."

The præambles of the writs of summons had, sometimes, the occasions of calling the parlement inserted, in the writs to the spirituall barons; which was not in those, to the temporall: and sometimes the writs had no more than a generall, and short narrative, of the resolution of having a parlement. There were other differences of lighter moment: sometimes against making of proxies, sometimes leave for proxies, in the writ; sometimes, a clause against coming with armes: butt generally, they kept a like forme.

In the writs to the bishops, they were named by their christian names, and name of office: as, "to the reverend father in God, John bishop of N." &c.¹; and if the surname was added; yett the writ was good. Butt abbots, and priors, might be named by the name of their office only.

A duke, marquis, earle, and viscount are regularly named by their christian names, and names of dignity; and rarely, yett sometimes, by their surnames, and names of knighthood.

If a baron be a knight, he is regularly named by his christian name, surname, and by miles or chivalier, and his barony. If he be no knight, then he is named by his christian name, and the name of his barony; and if the surname be added, it maketh not the writ vitious. And this holdes, where the baron taketh his dignity of a place; and where, of his surname: and there, to make a formal writ, it is good to adde the place of his barony.

¹ Reverendo in Christo patri Johanni episcopo N. &c.

In the rolles of parlement, from 23 R. 2. successively till 5 H. 6. among the barons that came to the parliament, it is entred in the writ, "to master Thomas de la Ware," &c.^m and some doe holde, that the addition of magister, was to distinguish him from them that were knights: as in the rolle of 1 E. 4. among the barons, it is said, "to John de Audeley, esq;ⁿ" for that the rest of the barons, (except himselfe, and the lord Clinton,) were chivaliers. Others doe holde, that de la Ware was of the clergy, before the dignity disceded to him; and in that respect, he was called magister.

In the rolle 5 H. 5. and other rolles after it, the word "baro" is applied to the lord of Greystocke, "to Ralphe, to John, &c. baron of Greystocke;" and, to few others. In many rolles, the barons that were knights are named chivaliers; which they liked rather than milites; for *eques auratus* is not used in lawe. In 1 E. 4. the entrie is, to "Edmond Grey of Ruthin chivalier;" and under that, in the rolle, is, "All knights, except John de Audeley esquire, and John lord Clinton^p."

In 3 E. 4. all the barons, (except the lord Scales,) have the addition of "chivaliers," and subscribed in the rolle thus: "all knights, except the lord Scales^q."

In the same yeare is the like for all. And it is observed, that the barons, if they were knights, were so named; butt not otherwise. Yett in H. 8. time, and since, barons are named "chivaliers," in the writ of summons; although they be no knights.

^m Magistro Thomæ de la Ware, &c.

ⁿ Johanni de Audeley, armigero, &c.

^o Radulpho—Johanni—baroni de Greystocke, &c.

^p Edmundo Grey de

Ruthin chivalier. Milites omnes, exceptis Johanne de Audeley armigero, et Johanne domino de Clinton.

^q Equites aurati omnes, præter dominum Scales.

There

There be also, in the rolles of summons, writs to banarets, in like sort as to barons, and taken for the same. And the proceedings against Gomines, and Weston, are said to be before the king of Castile, duke of Lancaster, the earle of Cambridge, and many other lords, barons, and banerets; being assembled in parlement^r.

These writs of summons, of our parlement, are letters missive from the king, to his officers in the severall parts of his kingdome; commaunding the appearance of persons att the parlement, or publique councill.

We find a summons very like this by king Hezekiah. He sent to all Israel, and Judah; and wrote letters also to Ephraim, and Manasseh: that "they should come to the house of the Lord, att Jerusale^m." The arabicke version makes no difference, nor distinction, of writing letters to Ephraim, and Manasseh; butt saith generally. "Hezekiah sent to all Israel, to the house of Ephraim, and to the house of Manasseh, to come to Jerusale^m." The 6 verse saith; "so the posts went with the letters from the king and his princes, throughout all Israel, and Judah." Our king sends his letters, or writs, by advice of his councill, to all parts of England. The syriack saith; that "the messengers went with the king's letters, throughout all Israel, and Judah." The arabicke version is the like; and the greek agrees with it^r. And the word ἐπιστολή signifiyes, "a commaund, a mandatory letter;" such as our writs are: and such were sent by king Hezekiah, by his messengers, from citty to citty, throughout all Israel, and Judah^w. And this was to summon, to a publique common councill of the king's, the princes,

^r 1 R. 2. rot. parl. n. 6. — Et plusieurs autres seigneurs, barons et banarets, escheants au dit parlement assemblez.

^s 2 Chron. xxx. i.

^t V. 6.

^u ἐπορεύθησαν οἱ τρέχοντες σὺν ταῖς ἐπιστολαῖς παρὰ τῷ βασιλέως.

^w V. 10.

or lords; and, the congregation, or commons: where a statute was made, by the consent of all, uppon this summons.

The summons of the græcians was, by the like mandatory epistles. And the Romans had the like way of commaund, by their mandatory letters; and used the very word "breve" for them, which is the latine word in this writ; and properly expresseth these short, and significant, mandatory letters.

In the empire of Germany when a diette is to be summoned, the emperour sends his commaund, or warrant, to the arch bishop of Mentz the chancellor, or his vice chancellor, to issue forth of the chancery letters missive in the name of the emperour; to summon all the princes, and free townes, to appear att a day and place appointed by the emperour, and named in the letters; to consult about the great affayres of the empire.

None is more neere in resemblance to our summons, (as well as to most of the rest of our proceedings,) than that of Sweden; where the king sendeth a warrant to the chancellor, to issue his mandatory letters out of the chancery, for summoning of a ricksdagh, att a day and place to be named in the letters. Which the chancellor doth accordingly, directing a particular letter to each arch bishop, bishop and superintendent, commaunding them to cause two proc-tors of the clergy to be chosen in each dioces; and a perticular letter is sent to each earle, and baron; and a generall letter to the land's heued, to summon all the gentlemen, and to cause to be elected the deputies of the cittyes, and boores.

C H A P. CXVII

Wittnes our selfe.

IN the private deeds of subjects, after the clause “in wittnes wherof,” &c. antiquity did adde hiis testibus, “these being wittnesse,” in the continent of the deed, written with the same hand that the deed was; which wittnesse were called, the deed read, and then their names entered. And this continued in the reigne of H. 8; butt now is wholly omitted.

In the antient charters of our kings which passed away any franchise, or renew of any estate of inheritance, was also contained this clause of “hiis testibus” of the greatest men of the kingdome: and in the charters of creation of nobility, the same clause continues to this day. Butt in other charters of the king, it was omitted about 400 years since: and then, in the place of it, came in this word “wittnes our selfe^a,” which in our writs was constantly, and of much elder date than in charters, inserted. And this is to be believed without any dispute, being thus testified. One observes upon it; that although men deliver trueth; yett to assent, because they deliver it, without satisfying our owne understandings, without inquiry, is against divinity. By St. James, we must not have the trueth, in respect of persons. Stella notes upon

^a Co. 2 Instit. Mag. Chart. c. 38. Sir Rog. Owen MS. pt. 1. f. 11.—
Teste meipso.

Luke; that John the baptist would have his testimony confirmed by arguments out of the old law. Ipse dixit belongs only to the God of heaven, who "did speake the word, and they were made^b." Erasmus notes, that the Pythagoreans learned that saying of the Ægyptians; and they, from Moses' writings. Ipse dixit, lately, is borrowed only by our gods on earth; wittnes their manner of wittnessing in their writs, and charters, "wittnes our selves."

^b Dixit, et facta sunt.

C H A P. CXVIII

Att Westminster.

OF this citty somewhat hath bin before noted. It is called, (and so it was heertofore,) “ the throne of the king, the bed of his justice, and the royallest and fittest place for distribution of justice; and for the assembly of the states of the kingdomes^a, to consulte together about the great affayres therof. And having there the opportunity of neernes to the king’s pallace of residence, wherby they may, with more ease, have accesse unto his royall person; the which is frequently necessary in those affayres. Yett Westminster hall was not taken to be so much a parcell of the king’s private pallace; as, within the præinct of the verge of the abbey of Westminster. As seemes to be proved by a record of our rolles of parlement in E. 1. time^b, which showeth; that Bogo de Clare priour of St. Trinity in London, for causing Edward earle of Cornwall during the parlement time, as he walked in the middle of Westminster hall, to be served with proces of citation to appeare before the arch bishop of Canterbury; that this prior was summoned to answear his contempt to our lord the king, before Peter de Chaucet steward of the king, Walter de Fancorte marshall of England, Edward earle of Cornwall, and “ the abbot of West-

^a MS. Sir Rog. Owen, pt. 2. p. 18. b.^b 18 E. 1. rot. parl.

minster bicaufe the hall of Westminster is within his præinct." Bogo was committed to the tower; and for his fine he submitted himfelfe to the king, "de alto et baffo," and was fined 1000l. That fometimes the courts of juftice fate elfewhere, than att Westminster, appears by a fine levyed before the juftices att St. Bride's, in E. 3. time^c.

^c 2 E. 3. 45. b.

C H A P. CXIX

The 13 year of our reigne.

THE account of time, in England, is from the birth of our Saviour, wherein all christians accord with us; and thereby certainty in leagues, treaties, negotiations, matters of trade, and all publique and forein affayres is maintained. Another computation of time we have, within ourselves, from the year of the reigne of our kings; and this is used in all writs, patents, commissions, legall proces and instruments. In private deeds, conveyances and writings generally, both the one and the other accompt is used by us; and the like computation is used by most of the kingdomes of Europe.

The Jewes made their accompt, from the beginning of the worlde. The Græcians made their account, according to the olympiades. The Romans, from the building of their citty. The Musulmans make their computation, after Mahomet. And every nation beginneth with his originall.

The chaldean account of the years of the reigne of their ten kings, before the floud, is 120 fari, which is fower hundred thirty two thousand years; which if accounted after our reckoning, of 365 dayes to the year, would be not only incredible, but ridiculous. Butt the greeke monkes Panodorus, and Anianus, doe understand the space of time contained in a faros, not for 3600 years; butt,

for so many dayes^a. So that this way, by the liberty of changing one notion of a space of time, into another, (which is often used in matters of greater moment;) the space of a farus shall be butt about tenne years. And thus the 120 fari, or the whole age of those ten kinges, comes butt to 1200 years. However this is a cleer testimony of that most antient account of time, by the years of the reign of those kings.

The Saxons did count time by the night; wherof we yett retaine our saying of "fennight, and fortnight;" for seaven nights, and fowerteene nights^b. The ages of their owne lives they alwayes counted by winters; as a "tin-winter knight," a childe, or boy, of ten years old; and the like. And the reason why they used this seems to have bin, bicause they had overpassed so many seasons of cold, and sharpe, weather. Especially if, (as some doe probably hold,) many of them came from the further side of the baltique sea; which I can testify to be a sufficiently colde, and sharpe, climate. By "winters" they also counted their termes of years; butt all came to the same account of 365 dayes, and nights, in one year. The beginning wherof we, and most protestant nations, doe still reckon, after the old account, from the 25 day of March; butt those of the romish profession are ten dayes before us^c.

Butt I acknowledge my want of learning in chronology, as well as in other matters; and, my feare, before this time, to have wearyed my reader as well as myself. And therefore, hold it high time to come to a full period: wishing hartily, that others may reape benefit by my great, though weake labours; for which I shall desire to give my God the glory.

^a Georg. Syncellus apud Scalig. in not. Euseb. p. 246. ^b Verstegan, p. 58.

^c By act of parliament, 24 Geo. 2. cap. 23. the new style, or gregorian as it is called, was received in these kingdoms: beginning on the 3d September 1752, which, (by the omission of 11 nominal days, after the 2d of September,) was then called the 14 September. It was also enacted, that in 1752, and in all future time, the year should commence on the 1st of January. (M)

C H A P. CXX

The 18 day of February.

ALL writs, and instruments of the king, and of all subjects, have their certaine dates; to the end, the time of graunting, or acting any thing by them, may be punctually knowne: wherby titles are ascertained, and controversies prevented.

There is a speciall reason for the precise dating of this writ; bicause, by our lawe, the summons of the parlement is to be 40 dayes before the beginning of it, or more; as this date makes the summons, by this writ, to be.

The like is sayd of the publique councells of Arragon; "that they cannot be deferred beyond fourty dayes".

This dating of writings, and publique instruments was, by common reason, used generally by all people.

The Græcians called it "a giving or date—a subscription of time unto a writing:" and to date a letter, or evidence, is thus expressed by them; "to subscribe to letters and writings, the day, moneth, and year." So faith the Latine also; "to putt, or write in the letters, a day of the making of them". And almost all our neigh-

^a Non possunt ultra quadraginta dies differri.

^b δόσις—τῆς ἐπιστολῆς

ὑπογραφή χρονικὴ—τὴν ἡμέραν, μῆνα καὶ ἐνιαυτον, τοῖς γράμμασιν ὑπογράφειν—
Diem in literis adscribere.

bour languages agree in the word of "dating" of writings, from "giving a time" of the making of them.

The dates of deeds, with us many times antiquity omitted; the reason is given, "for the change of the limitation of præscription:" butt dates were commonly given in the times of E. 2. and E. 3. and so downward.

The name of this moneth of "February," Minshaw derives from Februus, the god of purging by sacrifices, to whom Numa dedicated this month; being omitted by Romulus. Therefore the Græcians call it "the expiatory moneth^c." The Netherlanders call it sporkel-maend; that is the steps of ice. The Greeks also call it, the "casting of the deer^d;" so the Germans call it, hornung; bicause then the deer cast their hornes. Verstegan faith, they call it sprout-kele; bicause then the keel-wort springeth.

^c καθάρσιον.

^d ἐλαφρολιών.

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ADVERTISEMENT.

THE desire of the bookseller to oblige the public with this work, before the recess of parliament, has prevented a final review of any errata in the text: but it is hoped there are none so material, as to affect the sense. Certain errata in the notes may be corrected by the following list; wherein the *figures* mark the *page*, and the *letter* the particular note referred to. Omissions of accent in the Greek are not attended to.

Page	Note	V O L. I.	Page	Note	V O L. I.
5.	(k)	Galfr. Mon. Per omnia actus paternos imitans	261.	(c)	τὴν
8.	(c)	proem. relectionum	273.	(o)	blot out the comma between the hebrew words
	(d)	Math. Paris, p. 216.	275.	(l)	ἔιδη.
9.	(x)	2. b.	291.	(h)	Loyseau
10.	(h)	nella	295.	(e)	Crantzius
12.	(c)	Hardingus	299.	(w)	עַרְוָה
16.	(f)	after Βρετανικη a colon— καθ' ἣν—Κόρην	309.	(p)	latina
21.	(h)	H. 2.	312.	(h)	Capiblanco
29.	(q)	ἡυλόγησε—τὰς υἱὰς	314.	(r)	Frehero.
30.	(c)	ἀρμολύσας—Βασιλεία, lib. 1. extrem. ad fin.	322.	(b)	P. Mathieu hist. H. 4.
32.	(k)	מחלקנו	331.	(o)	Ærodius
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39.	(a)	בקרב ישראל	344.	(w)	ἀρχιερεὺς—κυρία
47.	(m)	Anianus	346.	(d)	P. Comeft
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83.	(c)	c.	375.	(d)	maffes—conseiller ès
94.	(i)	Angl. reg.	381.	(d)	χειροτονήθεις διακόν
104.	(t)	τῶ δῆμῳ	393.	(i)	Βοή—ψηφῶ
105.	(l. 12.)	ἀποδοῦναι	418.	(n)	שְׁלֵשָׁה
111.	(b)	fui	429.	(t)	constitutæ
115.	(b)	patriam injuriâ	433.	(c)	domin.
116.	(k)	Ponticus	450.	(o)	παιδεύειν ?
118.	(q)	inquinat			V O L. II.
129.	(w)	Synedrio	47.	(c)	Wemalchama
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165.	(s)	annat.	204.	(g)	Le lien qui
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255.	(k)	Χρίστος	421.	(i)	πόλεις σὺ
258.	(r)	llama.	Index.	(C)	Coccius

N. B. The

N. B. The two following notes which refer to p. xv. of the preface, after ‘ discordant interests that intervened,’ were communicated by a right honourable person to whom this work has other obligations ; and whose singular praise it is to have presided worthily, for five successive parliaments, at the head of the commons of Great Britain.

They are recited in Tyrrel’s History of England, p. 678 of the edition of 1720 ; being passages castrated from the first edition of our author’s memorials.

July 31,
1649.

‘ THIS was a year of great perplexity and danger, as to the publick affairs in the
‘ cause of the parliament. The publick business stood on this foot—If the parliament
‘ had lost but one battle, all who were engaged with them had been in danger of ruin,
‘ as to their lives and fortunes : and though they gained many battles ; yet their ene-
‘ mies still continued of power to raise fresh parties, and new troubles against them.

‘ When they were all subdued, so that not one man appeared in arms for the king,
‘ yet many appeared against the parliament : their own friends turned to be their ene-
‘ mies ; those who fought against the king’s party joined with the parliament, and
‘ they fought together against the cavaliers.

‘ When they were subdued, then the same soldiers fought against their own masters
‘ and fellow-soldiers ; witness the agitators, levellers, and mutineers.

‘ Those of the army turned head against them, from whom they had received their
‘ commissions to be an army, and bent their arms against those who had impowered
‘ them to bear arms ; yet God was still pleased to support the parliament, at least a
‘ considerable part of them, and to carry them through all the difficulties they met
‘ with in relation to their common enemy, tho’ great, numerous, and powerfull, and
‘ in relation to particular distempers and insurrections from that of their own party.

‘ We may from hence take notice of the vast hazard men undergo by engaging in
‘ such affairs as these were, in which the conquered were ruined ; and the conquerors
‘ did thereby but create to themselves new war, and troubles.

‘ Success raised in many of them a haughtiness of mind, and a roaming of imagi-
‘ nation ; every one almost of them endeavoured, or expected, to have his private
‘ fancy to be put in action, and to be little less than princes.

‘ To effect something dreamed on to this purpose, many wits were working : some
‘ were for one thing, some for another ; all were violent in their way, and brought
‘ into several parties, and factions.

‘ The army was divided into levellers, and disciplined soldiers ; the parliament was
‘ divided into royalists, and republicans ; the whole nation was divided into cavaliers,
‘ and parliamentarians.

‘ The parliamentarians were again divided into presbyterians, independants, anabaptists, fifth-monarchy men, and many other persuasions; and none but the most miserable of all cures for the sick state, no uniting of divisions but by a greater calamity, by the sword.

‘ When the king’s party grew up to any strength, then those of the parliament party united together to oppose the kings; and when that work was done, then they fell at variance among themselves.

‘ Thus we find it was by the precedent story; and thus we shall find it to continue, if God give me life and opportunity to continue this story: and this may be a sufficient argument, that there is neither safety, nor discretion, for any who can avoid it, to engage in matters of this nature.

‘ We who were engaged in those before mentioned, were unexperienced in these things, and in the consequences of them; flit into them by degrees, and before many of us were aware of them; and being once in, were by little and little plunged farther in, and knew not how to get out again.

‘ But those that have the examples, and warnings of the age preceding; and have in part known and heard their fathers relate the deep miseries and calamities of the civil war in their days, and to both parties; will be inexcusable if ever they engage in such affairs: and may they never see again those sad days, which have been in those times whereof we read before!’

Upon occasion of letters from Ireland, concerning some differences there, our author expresses his sentiments as follows.

March 21, 1649. — ‘ From these passages we may observe the contentiousness of men’s natures, and the little quiet to be expected in this world; the English were at variance with the Scots and Irish, the Scots at variance with the English and Irish, the Irish hated both the English and Scots.

‘ The native Irish differed among themselves, rebels from rebels, rebels from the english cavaliers, rebels and cavaliers there in war against the parliament.

‘ In Scotland was contention between the kirk party and the state, both were jealous of the king’s party, all of them together designing against England.

‘ In England the civil war not fully appeased betwixt the king and parliament; contention among the parliament party between the royalists and republicans, and again between the presbyterians and independants.’ See Whitelocke’s memorials, edit. 2. 1732. p. 417. and 446.

F I N I S.

Whitlocke, Bulstrode, 1605-1675

Whitelockes Notes Uppon The Kings Writt For Choosing Members Of Parleмент
XIII Car II Being Disquisitions On The Government Of England By King Lords
And Commons
Bd.: 2

London (1766)

4 Brit. 144-2

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